SUPREME COURT OF THE UNITED STATES.

No. ~~244~~ 123.

THE UNITED STATES, APPELLANTS,

vs.

FREDERICK BILLING, JAMES R. BOLTON, AND HENRY W. HALLECK, ASSIGNEES OF BEZAR SIMMONS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

GOVERNMENT PRINTING OFFICE.

Affirmed — Grier

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1 *Transcript of the proceedings in case No.* 68.

THE ASSIGNEES OF BEZAR SIMMONS, claimants, *vs.* THE UNITED STATES, defendants. } For the place named "Novato."

2

3 *Index to proceedings before board of U. S. land comm'rs.*

OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

Be it remembered that on this twenty-fourth day of February, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of the assignees of Bezar Simmons, for the place named "Novato," was presented, and ordered to be filed and docketed with No. 68, and is as follows, to wit:

(Vide page 5 of this transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

LOS ANGELES, *September* 1, 1852.

In case No. 68, assignees of Bezar Simmons, for the place named "Novato," the counsel for the claimants, having heretofore
4 presented a supplemental petition, were permitted to file the same among the papers in the case.

(Vide page 69 of this transcript.)

In the same case the counsel for W. Parker et al., having heretofore presented a petition to contest the right of the claimants, were permitted to intervene, in accordance with the additional regulations of the board of the 9th February, 1852, which petition was ordered to be filed among the papers in the case.

(Vide page 75 of this transcript.)

SAN FRANCISCO, *January* 29, 1853.

In the same case the deposition of Jacob P. Leese, a witness in behalf of the claimants, taken before Commissioner Harry J. Thornton, with documents marked H. J. T. No. 1 annexed thereto, was filed.

(Vide page 7 of this transcript.)

SAN FRANCISCO, *Sept.* 23, 1853.

Case No. 68, called on motion of the counsel for the claimants, ordered to the foot of the docket.

5 SAN FRANCISCO, *November* 23, 1853.

In the same case the deposition of Cayetano Juarez, a witness in behalf of the claimants, taken before Commissioner R. Aug. Thompson, was filed.

(Vide page 8 of this transcript.)

SAN FRANCISCO, *November* 25, 1853.

In the same case the deposition of Salvador Valljo, a witness in behalf of the claimants, taken before Commissioner R. Aug. Thompson, was filed.

(Vide page 10 of this transcript.)

SAN FRANCISCO, *December* 1, 1853.

In the same case the deposition of John Martin, a witness in behalf of the claimants, taken before Commissioner Alpheus Felch, was filed.

(Vide page 16 of this transcript.)

SAN FRANCISCO, *December* 5, 1853.

In the same case the deposition of Gilbert R. Brush, a witness in behalf of the claimants, taken before Commissioner Thompson Campbell, was filed.

(Vide page 20 of this transcript.)

SAN FRANCISCO, *Sept.* 12, 1854.

6 Case No. 68 was submitted without argument.

In the same case the depositions of Thomas E. Evershed and J. J. Warner, witnesses in behalf of the claimants, taken before the commissioners sitting as a board, were filed.

(Vide pages 22 and 24 of this transcript.)

SAN FRANCISCO, *October* 3, 1854.

In the same case the counsel for the claimant filed the following stipulation, with documents therein described.

(Vide page 83 of this transcript.)

SAN FRANCISCO, *November* 7, 1854.

In the same case Commissioner S. B. Farwell delivered the opinion of the board, confirming the claim.

(Vide page 113 of this transcript.)

And the following order was made, to wit.

(Vide page 117 of this transcript.)

7 *Petition.*

To the honorable commissioners to settle private claims in California:

The petitioners, Frederick Billings, James R. Bolton, and Henry W. Halleck, assignees of Bezar Simmons, respectfully show:

That Fernando Felis, in the year 1836, applied to the proper authority and received permission to settle and occupy a tract of land called Novata, situate in the present county of Marin, and in the then jurisdiction of Sonoma, or Frontier of the North, containing two square leagues, more or less.

That on the 16th day of April, A. D. 1839, Juan B. Alvarado, governor of California, by virtue of authority in him vested, granted, by patent, to the said Fernando Felis, the said tract of land.

That on the 13th day of November, A. D. 1839, Manuel Jimeno, governor *ad interim* of California, by virtue of authority in him vested, issued a new grant to the said Felis for the same tract of land, more particularly defining its boundaries in accordance with the map accompanying the espediente.

8 That on the 22d day of May, A. D. 1840, the said grant was approved in due form by the departmental junta.

That on the 15th day of November, A. D. 1842, the said land was duly surveyed, and the juridical possession given by the proper authority to the aforesaid Felis.

That on the 20th day of December, A. D. 1844, the said Fernando Felis conveyed to Jacob P. Leese the said tract of land.

That on the 24th day of November, A. D. 1846, the said Jacob P. Leese and wife conveyed the said tract of land to Bezar Simmons.

That on the 3d day of September, A D. 1850, the said Bezar Simmons, by deed of assignment, conveyed the said tract of land to your petitioners; copies of which original petitions, grants, map, approval, deeds of conveyance, and of assignment, are hereto annexed, marked A, with translations, marked B.

9 And the petitioners further show, that the said land has not been surveyed by the surveyor general of the United States, but that it was surveyed by the proper authority at the time of giving the juridical possession, and that its boundaries are easily to be recognized and well known.

That since the year 1836, the said Fernando Felis, Jacob P. Leese, Bezar Simmons, and the petitioners have been, and the petitioners now are, in quiet, peaceable, and undisputed possession and occupation of the said land.

That they know of no conflicting claim.

That they rely for confirmation of title upon the original documents and records, copies of which are hereto annexed upon the minutes and documents in the archives now in the charge of the surveyor general, and upon such other and further proofs as they may be advised are necessary.

Wherefore they pray the commissioners to confirm to them the aforesaid tract of land.

By their attorneys,

HALLECK, PEACHY & BILLINGS.

Filed in office Feb'ry 24th, 1852.

GEO. FISHER, *Sec'y.*

10 *Dep. of J. P. Leese.*

SAN FRANCISCO, *January* 29, 1853.

On this day, before Com'r Harry J. Thornton, came Jacob P. Leese, a witness in behalf of the claimant, Bezar Simmons, petition No. 68, and was duly sworn, his evidence being given in English.

In answer to questions propounded by claimant's counsel, the witness testified as follows:

My name is Jacob P. Leese; my age is 43 years. I have lived in California 20 years.

I am acquainted with the handwriting of Manuel Jimeno, Francisco C. Arce, Fernando Felis, Salvador Vallejo, Cayetano Juarez, Francisco Higuera, Antonio Ortega, Gregorio Briones, Victor Prudon, and Nasario Berreyesa; their signatures to the papers before me, marked Exhibit 1, herein, are genuine.

I know the rancho called Novato in Marin county; Fernando Felis occupied it in 1839, with a house, horses, and cattle, and sowings.

In 1844 he sold the land to me, and I occupied it until 1846,
11 when I sold it to Capt. Bezar Simmons, who continued to occupy it until his death, 1850.

J. P. LEESE.

U. S. law agent present.

Sworn to and subscribed before me this 29th of Jan'y, 1853.

HARRY J. THORNTON, *Com'r, &c.*

Filed in office Jan'y 29, 1853.

GEO. FISHER, *Sec'y.*

Dep. of C. Juarez.

Case No. 68.

OFFICE OF THE BOARD OF COMMISSIONERS, &C., &C.

This day, before Com'r R. Aug. Thompson, came Cayetano Juarez, a witness in behalf of claimant, Bezar Simmons, petition No. 68, who being duly sworn, his testimony being in Spanish, was interpreted by the secretary, as follows:

Testimony on behalf of claimant.

Present: Peachy, att'y for claimant, and R. Greenhow, esq., ass't law agent.

12 Witness states his name is Cayetano Juarez; age, forty-four years; and residence, Sonoma, California.

Questions by claimant's att'y. Look at the document now shown you, marked as Exhibit No. 1 to the depositions of Jacob P. Leese, and with the initials H. J. T., heretofore filed in this case, particularly to that part of said document purporting to be a conveyance from Fernando Felis to Jacob P. Leese of the Novato rancho, being the land claimed in this case, dated December 20, 1844, and say if you recognize the signatures thereto of Fernando Felis, the vendor, Victor Prudon, Nasario Berreyesa, assistant witnesses, as also your own; and state whether the same are genuine or not.

Answer. The document last mentioned, being the act of sale in the question, was executed before me in my official capacity, as second alcalde of the jurisdiction of Sonoma. I have a distinct recollection of the transaction, and recognize my own signatures where they occur thereon, as well as those of the other persons named in the question as their genuine signatures. They were all executed in my pre-
13 sence. I am also acquainted with their handwriting, having seen them write. Victor Prudon is now living in San Francisco; Nasario Berreyesa is dead.

CAYETANO JUAREZ.

Sworn to and subscribed before me, November 23, 1853.

R. AUG. THOMPSON, *Com'r.*

Filed in office Nov. 23, 1853.

GEO. FISHER, *Sec'y.*

Dep. of Salvador Vallejo.

Case No. 68.

OFFICE OF THE BOARD OF U. S. COMMISSIONERS, &C., &C.

This day, before Com'r R. Aug. Thompson, came Salvador Vallejo, a witness in behalf of claimant, petition No. 68, and, being duly sworn, deposed as follows:

His evidence, being given in the Spanish language, was interpreted by the secretary.

Testimony on behalf of claimant.

Present: Peachy, on behalf of claimant, and R. Greenhow, esq., U. S. ass't law agent.

14 Witness states his name is Salvador Vallejo, his age forty years, residence Sonoma, California.

Questions by claimant's att'y. Do you know the rancho called Novato, claimed in this case? If so, how long have you known it?

Answer. I know said rancho, and have known it since the year 1833.

Question by same. Look at the document now shown you, marked "Doc. No. 1," and with the initials H. J. T., and annexed to the deposition of Jacob P. Leese, filed in this case, particularly at that portion of it purporting to be a record of the proceedings had in giving juridical possession of said rancho to Fernando Felis, and say

whether you recognize the said document; if you are acquainted with the handwriting of Fernando Felis, of Salvador Vallejo, Cayetano Juarez, Francisco Higuera, Antonio Ortega, and Gregorio Briones; and if their signatures on said document are genuine.

Answer. I do recognize said document as an original document, made by myself. I am acquainted with the handwriting of
15 the parties named in the question. Their signatures, where they appear on said document, are genuine, and were executed in my presence at the time they bear date.

Question by same. Look at the document marked A, and with the initials R. T., purporting to be a traced copy duly certified from archives of California, now in the office of the U. S. surveyor general for the State of California, of certain papers relating to the title to said rancho, and particularly at the map therein contained. Say if you can point out on said map the lines run by you when you gave the juridical possession aforesaid, and if said map is a true copy of that by which you gave said possession.

Answer. I recognize said map as a correct copy of that by which I gave said possession. In giving said possession I commenced at the mouth of the Arroyo de Arichi, emptying into the estuary of Petaluma, or Bay of San Pablo, and marked on said map with a small cross (+) made by me. From thence I run up said arroyo to the point marked Palo Cola'do, as marked by the dotted line on the
16 map, in a westerly direction two hundred cordels of 50 varas each. From that point I run in a northerly direction 100 cordels of 50 varas, to the point marked on said map by two small crosses, (+;) thence in an easterly direction, 100 cordels, to a point called Oloni Pali in the estuary; from which point we followed the coast of the estuary around the "Punto del Potrero," on said map, to the beginning—all of which are designated by the dotted lines on said map. These lines were run in accordance with the testimony of the witnesses examined by me, as set forth in said record of the proceedings of the juridical possession, and in pursuance of the calls of the grant, and the lines on the map.

Question by same. State what you know of the possession of said rancho by Fernando Felis, and of the occupation, improvement, and cultivation of the same by him.

Answer. He occupied the said rancho from the year 1836 or '37. He had on it two houses, one of adobe and the other of wood; he had also corrals, some land fenced in, and in cultivation in
17 wheat, corn, and beans; also stocks of cattle and horses; he continued to occupy it until he sold it to Mr. Leese in 1844. Mr. Leese and his successors have occupied it ever since. During the period first above mentioned, Fernando Felis lived on said rancho with his family.

Question by same. State who owned the adjoining rancho when you gave the said juridical possession?

Answer. Camilo, an Indian, owned the land adjoining on the north, Ignatio Pacheco on the south, and Juan Martin on the west

Question by same. What separates the said rancho from the lands of the Indian Camilo?

Answer. A range of hills, along which the north line laid down on said map was run. The Arroyo de Arichi separates it on the south from the lands of Ignatio Pacheco; the west line, passing the Portesuelo, divides it from the land of Juan Martin.

Question by same. Is the point called Palo Colorado, marked
18 on said map, a well-known and well-defined place?

Answer. It is well known. It is on a high hill, with redwood trees growing on the summit; they are the only redwoods on the rancho.

Question by same. Is there any object by which you could identify the point on the map with two small crosses? (++)

Answer. At the time the measurement was made Fernando Felis erected there a pile of stones as a landmark, and I could now recognize the spot; at the termination of the line, from the last-mentioned point to the estuary at Oloni Puli, Felis and Camilo, who was present as a colindante, erected a pile of stones to mark the boundary between them.

Question by same. Look at the document now shown you, marked , with the initials R. T., herewith filed, purporting to be a deed of conveyance of the Novato Rancho by Jacob P. Leese and Rosalia, his wife, to Bezar Simmons, executed on the 24th of November, 1846, and say if you are the subscribing witness to said deed, and
19 if the signature of Jacob P. Leese and Rosalia Vallejo thereto are genuine?

Answer. I am the subscribing witness to said deed, and my signature thereto is genuine. The other signatures named were executed in my presence, and are also genuine.

Question by same. Look at the paper purporting to be a grant from Manuel Jimeno to Fernando Feliz, contained in the document first referred to, and state whether you know the handwriting of Juan B. Alvarado, Manuel Jimeno, Antonio Maria Osio, and Francisco C. Arce; and if so, whether their signatures where they occur on said paper are genuine or not.

Answer. I have examined said paper, I know the handwritings of the persons named, having often seen them write. Their signatures on said paper are genuine.

Questions by Mr. Greenhow. Is the Corte de Madera de
20 Pacagtacula included within the limits of said rancho as surveyed by you?

Answer. It is.

Question by same. Does the arroyo of Uorili run through the Cañada de Novata?

Answer. It does not; it rises south of the cañada, and runs into the estuary near the mouth of the cañada.

SALVADOR VALLEJO.

Subscribed and sworn to before me Nov. 25, 1853.

R. AUG. THOMPSON, *Com'r.*

Filed in office Nov. 25, 1853.

GEO. FISHER, *Sec'y.*

Dep. of Jno. Martin.

OFFICE OF THE BOARD OF U. S. LAND COMMISSIONERS, &c., &c.

This day, before Com'r Alpheus Felch, came John Martin, a witness in behalf of the claimants, assignees of Bezar Simmons, petition No. 68, and, being duly sworn, deposed as follows :

Questions by Mr. Peachy, att'y for claimant.

21 1. Question. What are your name, age, and place of residence?

My name is John Martin, my age is sixty-seven years, and I reside in Marin county, on the rancho adjoining the rancho called Novato.

2. Question. How long have you lived in California, and how long on the rancho where you now live?

Answer. I have lived in California thirty-one years, and on my present rancho since 1837.

3. Question. Please state what you know about the settlement, improvement, cultivation, and occupation of the rancho called Novato, by Fernando Feliz or any other person.

Answer. Fernando Feliz occupied it, cultivated and improved it and lived on it in 1837. I do not know how long he had been there at that time. He lived in a wooden house in 1837, and was then building an adobe house on the place, which I think he finished and occupied the same year. He had a wife and as many as
22 five or six children living then with him. He had cattle and some sheep there and cultivated some of the land. He had a number of Indians then there at work for him. He continued to reside on the place until he sold it to Mr. Leese. Mr. Leese bought it with the cattle on the place. Captain Simmons next occupied the farm. He had cattle on it, and built a new house on it. Then Knight lived there next. Feliz had an average of about eighty cattle on the place ; he had also horses, but I cannot tell how many.

4. Question. What is the southern boundary of the Rancho Novato?

Answer. The arroyo Arichi. This arroyo separates the land of Novato from Ignacio Pacheco's land, called San José.

5. Question. What is the western boundary of the Rancho Novato?

Answer. The western line of the rancho runs across the portezuelo of my farm.

23 6. Question. Where is the Cerrito Gracia?

Answer. It forms one part of the portezuelo ; it forms the north side of it.

7. Question. Is there any landmark or boundary on the Cerrito Gracia to designate the western boundary line of Novato?

Answer. There are two trees and stones piled up for a landmark or boundary.

8. Question. Is there any landmark south of that pile of stones to designate said western line?

Answer. There is. There are some redwood trees standing on a high hill, and the western line runs from the Cerrito Gracia to those trees.

9. Question. To what point does the western line run north of the Cerrito Gracia?

Answer. To a place called Devil's Rock, on the top of a hill near which the road from Novata to Petaluma runs.

24 10. Question. How far is it from the redwood trees to Devil's Rock?

Answer. About two miles and a half.

11. Question. What is the northern boundary of the rancho?

Answer. It runs from Devil's Rock to a pile of stones which are at foot of some chestnut trees near the foot of a hill called Olompali, and near the road leading from Novato to Camillo's rancho. This road passes near the marsh, and runs very near the foot of the hill.

12. Question. What is the eastern boundary of the rancho?

Answer. It is the Estero Novato. The Estero Petaluma is also a boundary on the east side of the rancho.

13. Question. What do you mean by estero?

Answer. The salt-water marsh.

JOHN $\overset{\text{his}}{+}$ MARTIN.
mark.

25 Mr. Greenhow, associate law agent, was present at the taking of this deposition, but propounded no interrogations to the witness.

Subscribed and sworn to before me this first day of December, 1853.

ALPHEUS FELCH, *Commissioner.*

Filed in office Dec. 1, 1853.

GEO FISHER, *Sec'y.*

Deposition of Gilbert R. Brush.

OFFICE OF THE BOARD OF U. S. LAND COM'RS, &C., &C.

This day, before Com'r Thompson Campbell, came Gilbert R. Brush, a witness in behalf of the claimant, Bezar Simmons, petition No. 68, and, being duly sworn, deposed as follows:

What is your name, age, and place of residence?

My name is Gilbert R. Brush; I am twenty-nine years of age; and I reside in Marin county, State of California.

When did you first go on the rancho called Novato to reside?

26 I went there last July was a year, at which time I was mayordomo of the rancho, and was there in the employment of Mr. Peachy. At the time, there was about one hundred and fifty head of cattle and two hundred and fifty horses on the place.

Are you acquainted with the boundaries of said rancho? and if so, state what they are.

Commencing at the Arroyo Arichi, at its mouth, where it empties into the estero; thence running up the Arichi through the Cañada de la Nata; thence to the portezuelo to the ranch of Juan Martin, which lines form the southern boundary of said rancho. The western line of said rancho crosses the portezuelo of Juan Miranda, and runs nearly north and south. At the portezuelo, on the right-hand side, there is a hill called the hill of Gracia, on the top of which there are two trees close together, and on the south side of said hill there is a pile of stones, placed there as a boundary mark; said western
27 line runs over said pile of stones. From said hill the western boundary line runs south to a point of redwood trees on a hill, a point well known. From said hill the western boundary runs north to a rock called the Devil's Rock, on the top of a hill, where the road crosses over leading to Petaluma. The whole length of said western boundary line I don't think exceeds two and a half miles. From the Devil's Rock the northern boundary line runs to the hill of Olompoli. At the northeastern corner there is a pile of stones, on the south side of the hill, where there is a small grove of horse chestnuts. The eastern side of said rancho is bounded by the estero of Novato.

Do you know of any roblar on said Novato rancho; and if so, on which side of the rancho is it situated?

There is such a grove, and is situated on the northern side of the rancho, and extends the quarter part of the way from the Devil's rock to Olimpalo.

What do you understand by the Cañada of Novato?

28 I have always understood by the Cañada Novato as that part lying on the creek of Arichi.

GILBERT R. BRUSH.

Sworn and subscribed before me this 5th day of December, A. D. 1853.

THOMPSON CAMPBELL, *Com'r.*

Filed in office Dec. 5th, 1853

GEO. FISHER, *Sec'y.*

Dep. of Thomas E. Evershed.

UNITED STATES LAND COMMISSION,
San Francisco, Sept. 12, 1854.

On this day, before the commissioners, sitting as a board, came Thomas E. Evershed, a witness in behalf of the claimant, Bezar Simmons, case No. 68, who, after being duly sworn, deposed as follows:

Questions by the counsel for the claimant.

Quest. 1st. What is your name, age, and place of residence?

29 Ans. My name is Thomas E. Evershed; my age, thirty years; my residence, San Francisco.

Quest. 2. What position do you hold in the office of the U. S. surveyor for California?

Ans. I am one of the archive clerks.

Quest. 3. State whether or not there are any documents which are the originals of document marked A. R. T., filed in this case, purporting to be a traced copy of an espediente relating to the Rancho Novato in said archives.

Ans. The document which I now produce is the original of the traced copy referred to, and certified to by Sam'l D. King, surveyor general for California.

Quest. 4. State whether there are any books in the archives in which titles are recorded after the year of 1836; if yea, state to what year those books relate, and for what years are wanting.

Ans. There are no books of titles in the archives after the
30 year 1836. The books that do exist in the archives are two: one entitled, "Registros de Sitios," fierros y señales; which book, as far as I recollect, shows records of grants from 1790 odd to about 1828. Those are about the dates I recollect. The record book begins in the year 1833, and goes to 1836; also showing records of grants. The book, from 1833 to 1836, in all instances, shows a full record of grants, but not the approval of the departmental assembly.

The U. S. law agent declines cross-examining the witness.

THOS. E. EVERSHED.

Subscribed and sworn to before the commissioners, sitting as a board, this 12th Sept., A. D. 1854.

Attest:

GEO. FISHER, *Sec'y.*

Filed in office Sept. 12, 1854.

GEO. FISHER, *Sec'y.*

31 *Dep. of J. J. Warner.*

UNITED STATES LAND COMMISSION,
San Francisco, Sept. 12, 1854.

On this day, before the commissioners sitting as a board, came J. J. Warner, a witness in behalf of the claimant, Bezar Simmons, in case No. 68, who, after being duly sworn, deposed as follows:

Questions by the claimant's counsel.

Quest. 1st. Look at the original document brought before this commission by Thomas E. Evershed, referred to in his deposition taken this day before this board in this case, and state whether or not you are acquainted with the handwriting of Juan B. Alvarado, former governor of California, with that of José Fernandez, S. Arguello, and Manuel Jimeno; what are your means of knowledge, and whether the signatures of the aforementioned persons on the said document are genuine.

Ans. I have seen all those gentlemen's writing except José Fernandez, and I am well acquainted with their signatures. The
32 signature of Juan B. Alvarado, on page marked 11 on the original document, of which page 11 on the traced copy is a fac simile, is a true and genuine signature of Alvarado. The signature of Fernandez on the pages referred to in each document, both the original and traced copy, I believe to be true and genuine, having seen his signature in many cases affixed to executive documents emanating from the government of California. On page 12 of the original document the name of Fernandez and Alvarado I believe to be their genuine signature, said signature appearing on page 12 of the traced copy before referred to. The name of Santiago Arguello, on page 13 of the original document, of which page 13 of the traced copy is a fac simile, is also his genuine signature. The names of Manuel Jimeno and José Z. Fernandez, on page 14 of said original document, of which page 14 of the traced copy is a fac simile, I believe to be their true and genuine signatures.

The U. S. law agent declines cross-examining the witness.

J. J. WARNER.

33 Subscribed and sworn to before the commissioners sitting as a board, this 12th Sept'r, A. D. 1854.

Attest: GEO. FISHER, *Sec'y.*

Filed in office Sept. 12, 1854.

GEO. FISHER, *Sec'y.*

34

35 1.—S. D. K.—1839.

Espediente promovido por el Con. Fernando Felis en pretencion del pasage nombrado de "Novato."

188.—1839.

A. R. T.

Spanish espediente.

2.—S. D. K.

MONTEREY, 12 *de Mayo de* 1839.

Informe el señor prefecto del primer distrito el contenido en esta instancia.

ALVARADO.

S'N. JUAN DE CASTRO,
M'zo 20 *de* 1839.

El prefecto del 1er. distrito visto el contenido en esta instan-

EXMO. SOR. GOVERNADOR: Fernando Feliz vecino de lar Fronterar del Norte ante V. E. en la mejor forma que á mis derecho convenga comparesco y digo: que siendo poseeder de un numero conciderable de ganado bacuno y caballar solicita del S'r comandote en estar fronterar el parage de Novato en close de provicional el que se me concedio en su concepto y

cia informa que no apareca obstaculo ninguno para que el terreno solicitado se conseda en propiedad á la parte que lo pretende.

CASTRO.

36 conforme espresa el documento numero 1o. que acompaño; y al efecto de consequirla propiedad del mencionado parage, finque una cara de paseo opuse algun ganado bacuno y caballar, y he procurado darle el cultivo necessario. Ahora hago ante V. E. la impetracion de que se me conceda el referido parage de Novato segun indicar las linear tiradas en el adjunto diseño agregando habia

3.—S. D. K.

servido en la carrera militar 15 anos, tenia que asistir á una nuimerosa familia y ser fundador de esta parte inculta de la Alta California. Por lo espuesto á V. E. rendidamente suplico, se sirva atender á esta me solicitud, decretando en my favor si fuere justo de que recibiré merced.

FERNANDO FELIZ.

Sonoma, Mayo 4 de 1838.

4.—S. D. K.

No va en papel sellado por no haberlo en este lugar.

Sonoma, No. 18, de 1830. Se concede al interesado en esta instancia en clase de provicional y mientrar — ha ce los ocurros segn. esta establecido el parage que pide. intermin. corre todor los demar tramiter no re le im-

37 pedira que haga sus labores y demar que crea necesitar.

MARNO. G. VALLEJO.

SŏR COMANDTE. MILITAR DE SONOMA Y LA FRONTERA: Fernando Feliz vecino de esta frontera y radicado en San Kafael ante V. como mejor convenga digo ; que habiendome resuelto á establecerme y radicarme en esta jurisdiccion con mir bienes semovienter y no teniendo en que verificarlo por falta de un terreno propio para el efecto solicito que V. me permita poner mes d'hos bienes en el parage de Novato en la parte de arriba del arroyo que corre de poniente á orienté cuyo terreno, como anter he manifestado á V. esta Valdio y no pertenece á la propiedad de

5.—S. D. K.

persona alguna. Por tanto á V. suplico se sirva atender á esta solicitud de que viviré reconocido.

FERNANDO FELIZ.

SONOMA, *N'bre* 18 *de* 1836.

6.—S. D. K.

7.—S. D. K.

39 Juan B. Alvarado, governador constitucional del departamento de las Californias:

Por cuanto el ciudadano Fernando Feliz ha pretendido para su beneficio personal y el de su familias el terreno conocido con el nombre de Novato, colindante al este con el estero de Novato, al ote. con el Serrito de Garcia al nte. con el Roblar y al sur con la Cañada de Novato; practicadas previamente las diligencias y averiguaciones concernientes segun lo dispuesto por leyes y reglamentos; usando de las facultades que me son conferidas á nombre de la nacion Mejicana he venido en concederle el terreno mencionado declarandole la propiedad de el por las presentes letras sugeto á la aprobacion de la ex'ma junta departamental y á las condiciones siguientes:

1a. Podra cercarlo sin perjudicar las le travesias caminos y servidumbres lo disfrutará libre y esclusivamte' destinandolo al uso ó cultivo que mas le acomode pero dentro de un año fabricará casa y estará habitada.

2a. Solicitará del juez respectivo que lo de posecion juridica
40 en virtud de este despacho por el cual se demarcaran los linderos en cuyos limites pondrá á mas de las mojoneras algunos arboles frutales ó silvestres de alguna utilidad.

3a. El terreno de que se hace mencion es de dos leguas poco mas ó menos segun esplica el diseño que corre en el espediente. El juez

8.—S. D. K.

que diere la posesion lo hara medir conforme á ordenanza quedandos el sobrante que resulte á la nacion para los usos convinientes.

4a. Si contraviniere a estar condicioner perderá su derecho al terreno y será denunciable por otro.

En consecuencia mando que teniendose por firme y valedero este titulo se tome razon de el en el libre respectivo y se entregue al interesado para su resguardo y demas fines.

Dado en Monterey á diez y seis de Abril de mil ochocientos treinta y nueve.

JUAN B. ALVARADO.

MANUEL JIMENO, *Sc'rio.*

Queda tomada razon de este titulo en el libro sobre adjudicaciones de terrenos valdios á fojar 12 vuelta.

JIMENO.

9.—S. D. K.

EXMO SOR GOVERNADOR: Fernando Feliz vecino de las Tron-
41 terar del Norte ante V. E. en la mejor forma que á mis derechos convenga comparesco y digo; que ya siendo poseeder de un num'o considerable de ganado bacuno y caballar solicito del S'r com'te de estar fronterar el parage de Novato en clase de provicional el que

se me consedio en ese concepto y conforme espresa el documento num'o 1o que acompano ; y al efecto de conseguirla propiedad del mencionado parage finqué una casa de paser, puse algun ganado vacuno y caballar y he procurado darle el cultivo necesario D. ahora hago ante V. E. la impetracion de que se me conceda el referido pa-

10.—S. D. K.

rage de Novato segun indicar las lineas tiradas en el adjunto diseño aggregando haber servido en la carrera militar 15 años, tener que assistir á una numerosa familia y ser fundador de esta parte inculta de la Alta California.

Por lo espuesto A. V. E. rendidamente suplico se sirva atender á esta mi solicitud ; decretando en mi favor si fuere justo de que recibire mercer.

Sonoma, Marzo 4 de 1838. FERNANDO FELIZ.

42 Nova en papel sellado por no haberlo en este lugar.

11.—S. D. K.

MONTEREY, *Abril* 16 *de* 1839.

Vista la peticion con que du principio este espediente la posesion que provicionalmente obtiene por el comandante encargado del punto de Sonoma con todo lo demas que se tubo presente y ver convino de conformidad por lo dispuesto por las leyes y reglamentos de la materia ; se declara al ciudadano Fernando Feliz dueño en propiedad del parage conocido con el nombre de Novato con estencion de dos leguas poco mas ó menos segun esplica el diseño que corre agregado en este espediente librese el despacho correspondiente, tomere razon en el libro respectivo y reservase este espediente para la debida aprobacion de la exma junta departmental estiendose el titulo de consecion con las condiciones acostumbradar. El señor D'n Juan B. Alvarado, governador del departmento de la Californias, le mondo, decretó y firmó de que doy fé.

ALVARADO.

MONTEREY, 19 *de Mayo de* 1840.

43 Dado cuenta á la E. junta departamental acordo en sesion de hoy que pase á la comicion de agricultura.

JOSE T. FERNANDEZ, *Sc'rio.*

12.—S. D. K.

En veinte y dos del mismo lo devolvio la comision por el dictamen que se acompaña.

FERNANDEZ.

MONTEREY, 12 *de Junio de* 1840.

En visto de la aprovacion Otorgada veinte y dos del mer po. pdo. por la E. junta departamental librese testimonio de ella a la parte de D. Fernando Feliz en confirmacion del terreno nombrado Novato que obtuvo en diez y seis de Abril del año p. pdo. El Sr. D. Juan B. Alva-

rado, governador constitutional del departamento de las Californias asi lo proveyo y firmó de que doy fé.

13.—S. D. K.

Exmo S'r : La comision de agricultura encargada de dictaminar en la solicitud de D. Fernando Feliz. Visto el espediente en atencion à los informer que en el constan y lo mas que verse ha povido y la consescion del exmo. sor. Governador Dn. Juan Bautista Alba-
44 rado la comision pone à la deliberacion de Y. E. los articulos siguientes :

Arto. 1o. Se aprueba la consecion echa por el Sr. Governador D. Juan Bautista Alvarado. Al bonado del terreno conocido con el nombre de Novato en la persona de Fernando Feliz.

Arto. 2o. Este espediente volvera al govierno departamental.

Monterey, de Mayo 20 de 1840.

JOSE RAFAEL GONZALEZ.

J. Arguello.

14.—S. D. K.

Monterey, 22 *de Mayo de* 1840.

En sesion de este dia aprobo la exma junta departamental los dos articulos con que concluye el dictamen anterior.

MAN'L JIMENO, *President.*

Jose L. Fernandez, *Sc'rio.*

Office of the Surveyor General of the United States for the State of California.

I, Samuel D. King, surveyor general of the United States for the State of California, and as such now having in my office, and under my charge and control, a portion of the archives of the former Spanish and Mexican territory or department of Upper Californias do hereby certify that the fourteen preceding and hereunto
45 annexed pages of tracing paper, numbered from one to fourteen inclusive and each of which is verified by my initials, (S. D. K.) exhibit true and accurate copies of certain documents now on file and forming a part of the said archives in my office.

In testimony whereof, I have hereunto signed my name officially, and affixed my private seal, not having a seal of office, at the city of San Francisco, Cal., this 2d day of January, 1852.

[SEAL.]

SAM'L D. KING,
Surveyor Gen'l, Cal'a.

Filed in office Nov'r 21, 1853.

GEO. FISHER, *Sec'y.*

46 *Doc. H. I. T., No. 1, annexed to depo. of Jacob P. Leese, taken before C. Hall.*

Escritura de Venta.

Que hace Fernando Feliz en favor de Jacob P. Leese, en el Pueblo de Sonoma á los 20o dias de Dec'r de 1844.

JUSGADO DE SONOMA.

Espediente instruida para medir y dar posesion de dos sitios de ganado mayor en el rancho de Novato, eldia 19 de 1842.

Jues el ciu'do.

SALVADOR VALLEJO.

De assistencia:

CAYETANO JUAREZ.
FRAN'CO HIGUERA.

Sello 1o. seis pesos: Habilitado provisionalmente por la aduana maritima de Monterey para los años de 1839 y 1840.

ALVARADO.

ANTONIO MARIA OSIO.

Manuel Jimeno Casarin, primer vocal propietario de la exma junta del departamento de las Californias en egercicio del gobierno del mismo.

Por cuanto el C'no Fernando Feliz ha pretendido para su
47 beneficio personal y el de su familia el terreno conocido con el nombre de Novato, colindante al norte con el terreno que ocupa el indigena Camilo, al sus con el de Ignacio Pacheco al este con el mas y al oeste con Juan Martinez; practicadar previamente las diligencias y averiguaciones concernientes segun lo dispuesto por leyes y reglamentos; usandos de las facultades que me son conferidas á nombre la nacion Mejicana he venidos en concederle el terreno mencionado declarandole la propriedad de la por las presentes letras sugetandose á la aprobacion de la exma junta departamental y á las condiciones siguientes:

1a. Podrá cercarlo sin perjudicar las travesias, caminos y servidumbres destinandole al uso ó cultivo que mas le acomode pero dentro de un año fabricará casa y estara habitada.

2a. Solicitara del juez respectivo que le de posesion juridica en virtud de este despacho, por el cual se demarcaran los linderos en cuyos limites poudra á mas de las mojoneras algunos arboles frutales ó silvestres de alguna utilidad.

48 3a. El terreno de que se hace donaciones de dos sitios de ganado mayor poco mas ó menos segun esplica el diseño que corre en el esped'te; el juez que diere la posesion lo hara medir conforme á ordenanza para señalar los linderos, quedando el sobrante que resulte á la nacion para los usos conbenientes.

4. Si contraviniere á estas condiciones perderá su derecho al terreno y sera denunciable por otro.

En consecuencia mando que sirviendole de titulo el presente y teniendose por firme y valedero, se tome razon en el libro á que corresponde, y se entregue al interesado para su resguardo y demas fines.

Dado en Monterey á trece de Noviembre de mil ochocientos treinta y nueve.

MAN'L JIMENO.

FRANCISCO C. ARCE, *Official Primero.*

Queda tomada razon de este despacho en el libro de asiento sobre adjudicaciones de terrenos valdios á fa. 12 y'ta.

ARCE.

Se or JUEZ de 1a. inst'a.

Fernando Feliz vecino de esta jurisdiccion dueño del Rancho de Novato como proceda mejor de d'ro anto V. paresco y digo:
49 que como consta del titulo que presento con la solemnidad y juramto. necesario, tengo en mi d'ho rancho dos sitios *sitios* de ganado mayor debajo de los linderos que espresa d'ho titulo y por que necesita pa que en todo tiempo conste hasta donde llegan y si me per judican ó per judico á alguno de los circumvecinos á ellos; se ha de servir V. mandas que precediendo las diligencias acostumbradas de identidad, vista de ojos y reconcte. se proceda con sitacion de los circumvecinos á la medida de mis d'has tierras pa. cuyo efecto nombro desde ahora y para cuando el caso llegue por medidor á D. Antonio Ortega vecino de esta jurisdiccion inteligente en esta materia y que los demas que fueran interesados nombren otros medidores por su parte y se proceda á d'has medidas.

P. T. A. V. suplico se sirva mandar hacer como llevo pedido y fecho que sea se me devuelva d'hos recandos con las dilig's originales que se hicieren pa. en guarda de mi d'ro; este escrito y todo lo necessario, &c., dispensandome el uso de papel comun por falta del sellado correspondte.

San Rafael, N'bre 10 de 1842.

FERNANDO FELIZ.

50 En el pueblo de S'n Rafael á los on ce dias del mes de D'bre de mil ochocientos cuarenta y dos, ante mi el C'no Salvador Vallejo, juez de esta jurisdiccion se leyó esta peticion y vista la hube pa. presentada con el documento qe. espresa y mando que con citac'n de los circumvecinos se haga informacion de identidad, vista de ojos, y reconocim'to de d'has tierras á esta pronto á asistir personalm'te; asi lo proveyó, mandó y firmó. con los de asc'a.

SALVADOR VALLEJO.

Ass'a: CAYETANO JUAREZ.
Ass'a: FRAN'CO HIG'A.

En el espresado pueblo á los doce dias del mes de N'bre de mil ochocientos cuarenta y dos yo el referido juez con los de assista. pa. proceder á la informacion de identidad hice parecer ante mi el C'no Ant'o Ortega vecino de esta jurisdiccion de oficio labrador y casado

del cual recibi juramento que hizo por Dios y la señal de la cruz en forma, á cargo del cual prometio decir verdad y siendo preguntado por el conocimiento de las tierras y parages terminos y linderos pertenecientes al Rancho de Novato, Dijo; que hace ocho años es vecino esta jurisdiccion y sabe que las tierras pertenecientes á d'ho
51 rancho son del C'no Fernando Feliz y tiene por linderos el Arroyo de Arrichi el portezuelo del rancho de Jn. Martinez el Corte de Madera de Pacaytacala y el Serro de Olampali, las cuales ha visto, reconocido varias veces y que desde que las posee el referido Fernando Feliz las ha cultivado y han pastado en ellos sus ganados y para prueba de lo que tiene dicho está pronto á is á dichas tierras con el preste. juez y señalarle los parages terminos y linderos donde ——— llegan y que lo que lleva dicho es la verdad por el juramento que tiene hicho en que se afirmó y ratifició: declaro ser de 50 años de edad y que las leyes generales no le tocan y firmo con el preste. juez y los de assa. segun d'ro.

ANTONIO ORTEGA.
SALVADOR VALLEJO.

Ass'a: CAYETANO JUAREZ.
Ass'a: FRAN'CO HIG'A.

A continuacion hice comparecer al ciud'no Gregorio Briones, vecino de esta jurisd'n y su declaracion es identisa á la anterior firmo conmigo y los de ass'a segun dro.

GREGORIO BRIONES.
SALVADOR VALLEJO.

Ass'a: CAYETANO JUAREY.
Ass'a: FRAN'CO HIG'A.

52 En el mismo dia, mes y año hice comparecer al ciud'no Juan Martinez de la misma vecindad oficio y estado que los anteriorer de edad de cuarenta y dos años su declaracion fué identica á la primera y firmo commingo y los de asistencia, segun dro.

SALVADOR VALLEJO.

Ass'a: CAYETANO JUAREZ.
Ass'a: FRAN'CO HIG'A.

Estando en el ampo en el parage nombrado arroyo de Anichi, serminos de Novato á los trece dias del mer de N'bre de 1842, yo el juez astuando pr. receptoria con dos testigos de ass'a por falta de escribano publico los testigos por mi examinador prest'e el ciud'no Fernando Feliz dueño de d'har tierras y ciud'no y ciud'nos Gregorio Briones, Antonio Ortega, Man'l Cantua, y Juan Martinez, colindanter y circumveciones procedi á ver y reconoces las tierras de d'ho rancho y para mayor claridad puesto á Caballo en comp'a de todas las partes y testigos referidos; mande á los susodichos me señalazen los parages, terminos y linderos de ellos segun las señales que han declarados en sus disposiciones asi lo hicieron y yo el repetido juez los vi y reconoci con ellos los de mi assistencia y papeles presentados y para

53 que conste se puso por diligencia y lo firmé con los de mi ass'a y demas que supieron.

SALVADOR VALLEJO.
FERNANDO FELIZ.
GREGORIO BRIONES.

Ass'a : CAYETANO J. JUAREZ.
Ass'a : FRAN'CO HIG'A.

Inmediatmt'e yo el juez para proceder á las medidas, despues de la notificacion y ratificacion de estilo presente el ciudadano Fernando Feliz y circumvecinos á d'has tierras hice comparecer ante mi y los de ass'a á los C. C. Antonio Ortega y Gregorio Briones, medidores nombrados á quienes mandé tomasen un cordel de hilo y midiesen cincuenta V'ras con V'ra de medir de cuatro palmos castellanos y en efecto los referidos medidores en mi presencia midieron en un cordel torcido y bien tirado con vara de medir Castellana Mejicana y sellada el num'o d'ho de cincuenta y'as y les mandé procediesen á la medida de dos sitios de ganado mayor que poco mas ó menos pertenecen al rancho d'tro segun el titulo y disendo presentado y dieron principio á d'ha medida desde el Arroyo de Arrichi hasta el portezuelo
54 de Juan Martinez, donde llegaron con dos cientos cordeles de cincuenta V's. El interesado levanto alli un monton de piedras en señal de majonera de este punto siguiendo la medida hacia el Corte de Madera de Pacaytacala donde llegaron con cien cordeles y puso la correspondt'e señal de majonera y se prosigio midiendo con el mismo numero de cordeles hasta el serro de clompali donde puso la ult'a majonera y dandose por concluida la medida del terreno que comprende el rancho de Novato resulta que forma una estension de cinco mil varas de latitud y diez mil de longitud; y declararon los enunciados medidores estar enterado el C'no Fernando Feliz de las tierras que se corresponden segun el titulo y diseño que se hallan á la cabeza de este espediente por todo lo cuel y en señal de verdadera posesion y seremonial acostumbrada arranco piedras y yerbar y tiro por los cuatro vientos en manifestacion de legal y legitima posesion que tomo por si. En consecuencia el repetido S. Juez mando que por mas claridad de los linderos que van espresados hiciese á su costa y montiese unas majoneras de piedra y cul en altos de mas de V'a para que en todo tiempo conste, reconozcan y queden por terminos
55 y linderos de sus tierras para los demas circumvecinos de ellos y de haberse ejecutado d'har medidas quieta y pacificamente sin contradiccion de persona alguna lo pidio por testimonio y yo el referido Señor Juez con los de mi oss'a lo doy de haber pasado como dicho es y que las espresadas medidas han sido practicadas á todo el leal saber y entender de los medidores segun depusieron sin doto frande ni engano y para mas seguridad y ratificacion del juramento: que tienen hecho, firmaron conmigo y los de mi ass'a.

ANTONIO ORTEGA.
SALVADOR VALLEJO.
FERNANDO FELIZ.

Ass'a : FRAN'CO HIG'A.
Ass'a : CAYETANO JUAREZ.

En vista de hallarse concluida esta espediente en que consta habersele dado posesion juridicia del rancho nombrado Novato, al Ciudno. Fernando Feliz que la tomo por si, entreguesele á la parte el original para los usos que le convengan con los documentos que presenta. El Ciudno. Salvador Valejo juez de esta jurisdicion actuando por receptoria con dos testigos de assa. por falta de Escribano pub-
56 lico asi lo provei mandé y formé á los quince dias del mer de Novre. de mil ochocientos cuarenta y dos.

SALVADOR VALLEJO.

Assa: CAYETANO JUAREZ,
Assa: FRAN'CO HIG'A.

1844.—*Escritura de Venta que hace Fernando Feliz en favor de Dn. Jacobo P. Leese.*

JUZGADO 2d DE SONOMA.

En el pueblo de Sonoma de la Alta California á los veinte dias del mer de Diciembre de mil ochocientos cuarenta y cuatro, ante mi el C. Cayetano Juarez alcalde 2d. de dicha jurisdiccion funcionando por receptoria con dos testigos de asistenci Fernando Feliz veciuo
57 de esta jurisdiccion diji que por si y en nombre de sus hijos, herederos y susesores y de quien ellos hubiere titulo voz y causa de cualquiera manera vendia y da en venta real y enagenacion perpetua por juro de heredad por siempre jamar al C. Jacobo P. Leese, alcalde 1o. de esta jurisdiccion y á los suyos el terreno llamado Novato en cantidad de dos sitios de ganado mayor poco mas ó menos que le pertenece en posesion y propiedad al dicho Fernando Feliz colindte. al norte con el terreno que ocupa el Indigena Camilo; al sur con el de D. Ignacio Pacheco, al este, con la Bahia de San Franco. Solano y al Oriente con Juan Martinez segun consta *consta* por el titulo de pertenencia que adjunto esta escritura por los cualer corresponde en posesion y propiedad el otorgante el cual declara y asegura no tenerlo vendido ni empenado y que esta libre de tributo, memoria capellania, vinculo patronato fianza y de otro gravamen perpetico, temporal y especial general tacito y espreso y como tal se la vende con todar entradar y salidar: fabrica, usos costumbrer, regalias, servidumbrer y demar cosas anexar que ha tenido tiene y le pertenenecen segun derecho ; por cien vacar de vientre, veinte y cinco
58 terneritar veinte y cinco toritos, Diez Vacan mansas, veinte y cinco novillos y veinte y cinco toros, una manava de veinte y cinco lleguar, con su garañon; que tiene recibido segun el mismo confiesa y renuncia la ley nueva del titulo primo. partida quinta, y asi mismo declara que es el justo precio y verdadero valor del referido tereno y que no vale mar ni hallo que tanto le haya dado por el y si mar vale ó valer puede del exeso en poco ó mucha suma hace á favor del comprador y sus herederos y susesores gracia y donacion pura perfecta é irrevocable en sanidad con insinuacion y demas firmesas legaler y renuncia la ley 2o. titulo primro. libro diez nueva recopilacion que trata de los contratos de venta, trueql. en la mitad del justo precio y los cuatro años que prefiere para pedir su recision ó

cumplimto. á su justo valor. los que da por parados como si efectivamente lo estuviesen, y desde hoy en adelante para siempre se desapodera desiste y quita y aparta ya sur herederos y susesores del dominio ó propiedad posesion titulo voz recurzo y otro cualquiera dercho que le competa al enunciado terreno de Novato; los ceda renuncia y traspasa con lar acciones vales y personales utiles,
mixtar, directar y efectivas en el comprador y en quien
59 la suya represente para que la poseé, gosé, senabre, enagené
use y disponga de ella á su eleccion como de cosa suya adquirida con legitimo y justo titulo y le confiere poder irrevocable con libre franca y general administracion y construyo procurador actor en su propria causa para que de su autoridad entre y se apodere nominado terreno y presinde la real tenencia y posesion que por d'ro le compete: y para que no necesite tomarlo, ni pide que le de copia autorisada de esta escritura con la cual sin otro acto de aprenhencion ha de ser visto haverla tomado aprehendedo y trasferidole y en el interin se constituye su inquilino tenedor y precaria pocedor en legal forma y se obliga á que d'ho terreno será cierto seguro y efectivo al comprador y nadie lo inquictara ni moverá pleito sobre su propiedad posesion, goce y disfrute ni contra el aparacer gravamen alguno y si lo inquietase moviera á apareciese luego que el otorgante sur herederos y susesores sean requeridos comforme á derecho, saldrá á sus defensa y lo seguira á sus espensar en todas instancias y tribunales easta ejecutoriarlos y dejar al comprador y los suyos en su libre uso
y quieta y pacifica posesion; y no pudiendo consequirlo,
60 le daran otro igual en valor de fabrica sitio venta y comidades;
y en su defecto le restituyeran la cantidad que haya desembolsado las mejores utiles, presisas y voluntarias que á la sason tenga el mayor valor y estimacion que con el tiempo adquiera y todos los costos de daños gastos intereses ó memoscabos que se le siguieren y erogaren por todo lo cual se les ha de poder ejecutar solo en virtud de esta escritura y juramento del que lo posee; ó de quien lo represente en quien difiere su importe y la relaba de otra prueba y la observancia de todo lo referido obliga su persona y bienes haidos y por haber y confiere amplio poder á los señores jueces y tribunales de la nacion que de este negocio debe conocer conforme á derectro pa. que lo apremien á su compto. como por sentencia difinitiva de juez competente parado en autoridad de cosa jusgada y consentida por tal lo recibe.

FERNANDO FELIZ.

Ass'a: CAYETANO JUAREZ.
Ass'a: VICT. PRUDON.
Ass'a: NARCISO BERRELLESA.

Yo el infrascrito doy fé con los de asistencia el haberse estendido la antecedente escritura en papel comun por no haber en este lugar del sello que corresponde f'ha ut supra.

JUAREZ.

61 ADUANA MARITIMA DE MONTEREY.

Sello primero seis pesos habilitado provicionalmente por la aduana maritima de Monterey para los años de mil ochocientos treinta y nueve y cuarenta.

ANTONIO MA. OSIO.

Alvarado Manuel Jimeno Casarin primer vocal propietario de la exma. junta del departmento de lar Californias y en ejercio del gov'r del mismo por cuanto el C. Fernando Feliz ha pretendido para su beneficio personal y el de su familia el terreño conocido, con el nombre de Novato colindte. al norte con el terreno que ocupa el Indigena Camilo ; al sur con el de Ignacio Pacheco ; al este son el mar y al oeste con Juan Martinez ; practicadar previamente lar diligencias y averiguacioner concernienter segun lo dispuesto por leyes y reglamentos usando de las facultades que me son conferidas á nombre de la nacion Mejicana he venido en concederle el terreno mencionado, declarandole la propiedas de el por lar presentes letras sujetanse à la aprovacion de la E. junta departmental y à lar condicioner sigter. prima.

puede cercarlo sin perjudicas lar travesias caminos y ser-
62 vidumbres ; lo disfrutará libre y esclusivamento destinandolo al uso ó cultivo que mar le acomode, perro dentro de un aña fabricara casa y essará habitada.

Segdo. Solicitará del juez que le dé la posesion juridica en virtud de este despatcho por el cual se demarcaran los linderos en cuyos limiter pondran, à mas de las mojoneras algunos arboles frutales ó silvestrer de alguna utilidad.

Tercera. El terreno de que se hace donacion er de dos sitios de ganado mayor poco mar ó menos segun esplica el diseño que corre en el espediente el juez que diere la posesion lo hará medir conforme á ordenanza para senalar los linderos quedando el sobrante que resulte à la nacion hara los usos conbenienter.

Cuarta. Si contraviniere à estar condiciones perderà su derecho al terreno y sera denunciable por atro.

En consecuencia mando que sirviendole de titulo el presente y teniendose por firme y valedero se tome razon en el libro à que corresponde y se entregue al interesado para su resguardo y demas fines.

Dado en Monterey à trece de Noviembre de mil ochocientos
63 y nueve.

MANUEL JIMENO.

FRAN'CO C. ARCE, *Oficial primo.*

Queda tomada razon de este despacho en el libro de a sientos sobre adjudicaciones de terrenos valdios à fa doce—vta.

ARCE.

Certifico que es fiel copia la antecedente del titulo original. Misma f'ha. CAYETANO JUAREZ.

I hereby certify that the foregoing title from the Mexican government to a grant of land therein described, and the bill of sale to me from the original grantee, are this day transferred to Mr. Bezar Simmons by his attorney, James Alex. Forbes, he having purchased from me the whole of the land contained in the said title for the sum of six thousand dollars, the receipt of which I hereby acknowledge in full payment of the same.

JACOB P. LEESE.

SAN FRANCISCO, 22*d May*, 1847.

Filed in office Jan'ry 29th, 1853.

GEO. FISHER, *Sec'ry.*

64

65 *B.—Translation of espediente, title, possession, and sales.*

SONOMA, *Nov.* 18*th*, 1836.

The place petitioned for is granted provisionally to the person interested in this request, and until he can make out the required documents. While it is going through the other forms he will not be prevented from carrying on his labors, and other things which he may think necessary.

(Signed) M. G. VALLEJO.

To the Military Commandant of Sonoma and the Frontier:

I, Fernando Feliz, resident of this frontier, and settled in San Rafael, before you in the most proper manner represent that, having decided to establish myself and settle in this jurisdiction, with myself, moving property, and not being able to do so for want of a fit land for that purpose, I request that you will permit me to put my aforesaid property on the place of Novato, on the part above the brook which runs from west to east, which land, as I have before shown you, is vacant, and does not belong to any person.

Wherefore I pray you to attend to this request, for which I will be ever grateful.

(Signed) FERNANDO FELIZ.

SONOMA, *November* 18*th*, 1836.

66 B.

MONTEREY, *March* 12, 1839.

Let the prefect of the first district report on the contents of this petition.

(Signed) ALVARADO.

SAN JUAN DE CASTRO,
March 20, 1839.

The prefect of the first district, having seen the contents of this petition, reports that there seems to be no obstacle to the land pe-

To his Excellency the Governor:

I, Fernando Feliz, resident of the northern frontier, before your excellency in the manner most conducive to my rights, appear and say that, being owner of a considerable number of neat cattle and horses, I petitioned the commandant of these frontiers for the place of Novato, as a provisional grant, which was granted to me as such, as shown by document

titioned for being granted in fee to the party requesting it.

(Signed) CASTRO.

No. 1, which I transmit herewith; and for the purpose of acquiring the ownership of the aforesaid place I built a walled house, placed some neat cattle, and have endeavored to give it the necessary cultivation. I now make before your excellency the request that the aforesaid place of Novato be granted to me, as shown by the lines drawn on the annexed map, adding that I have served in the military capacity fifteen years; that I have to maintain a numerous
67 family, and am a settler of this uninhabited part of Upper California.

For the foregoing reasons I earnestly pray your excellency have the goodness to attend to this my petition, and, if you think it just, to decree in my favor, by which I will receive grace.

(Signed) FERNANDO FELIZ.

SONOMA, *March 4th*, 1838.

P. S.—This does not go on stamped paper because there is none in this place.

Juan B. Alvarado, constitutional governor of the department of the Californias:

Whereas citizen Fernando Feliz has, for his own personal benefit and that of his family, petitioned for the land known by the name of Novato—bounded on the east by the estero of Novato; on the west by the cerrito (peak) of Garcia; north by the Roblar; and south by the cañada of Novato—the proper measures and examinations being previously made, as required by laws and regulations, using the powers which are conferred on me in the name of the Mexican nation, I have granted him the aforesaid land, declaring to him the
68 ownership of it by these presents, subject to the approval of the most excellent departmental junta, and to the following conditions:

1st. He may enclose it without prejudice to the crossroads, roads, and servitudes, and enjoy it freely and exclusively, making such use or cultivation of it as he may see fit; but within one year he shall build a house on it, and it shall be inhabited.

2d. He shall request the proper magistrate to give him juridical possession in virtue of this order, by whom the boundaries shall be marked out. Besides the landmarks, he shall place some fruit or forest trees of a useful character.

3d. The land here mentioned contains two leagues, a little more or less, as shown by the map which goes with the espediente. The magistrate who may give the possession will cause it to be measured in conformity with the ordinance, leaving the surplus which may result to the nation for its convenient uses.

4th. If he contravene these conditions he shall lose his right to the land, and it may be denounced by another person.

69 Stamp first—six dollars.

Provisionally authorized by the maritime custom-house of Monterey for the years 1839 and 1840.

(Signed) ALVARADO.
(Signed) ANTONIO MA. OSIO.

Manuel Jimeno Casarin, senior vocal of the most excellent departmental junta of the Californias, acting as governor of the same:

Whereas citizen Fernando Feliz has, for his own personal benefit and that of his family, petitioned for the land known by the name of Novato, bounded on the north by land occupied by the Indian Camilo, on the south by that of Ignacio Pacheco, east by the sea, and west by Juan Martinez; the proper measurers and examinations being previously made as required by laws and regulations, using the powers conferred on me in the name of the Mexican nation, I have granted him the aforesaid land, declaring to him the ownership of it by these presents, subject to the approval of the most excellent departmental junta and the following conditions:

1st. He may enclose it without prejudice to the crossroads,
70 roads, and servitudes, and enjoy it freely and exclusively, making such use and cultivation of it as he may see fit, but within one year he shall build a house on it, and it shall be inhabited.

2d. He shall ask the proper magistrate to give him juridical possession in virtue of this order, by whom the boundaries shall be marked out, in which, besides the land marks, he shall place some fruit or forest trees of an useful character.

3d. The land granted in donation is two sitios de ganado mayor, (two square leagues,) a little more or less, as shown by the map which goes with the espediente; the magistrate who may give the possession will cause it to be measured in conformity with the ordinance, in order that the boundaries may be designated, leaving the surplus which may result to the nation for its convenient uses.

4th. If he contravene these conditions he shall lose his right to the land, and it may be denounced by another person.

In consequence, I order that these presents serving as a title, and being held as firm and valid, note be made of them in the cor-
71 responding book, and they be delivered to the person interested for his security and other purposes.

Given in Monterey on the thirteenth of November, one thousand eight hundred and thirty-nine.

(Signed) MANUEL JIMENO.
(Signed) FRANCISCO C. ARCE,
Chief Clerk.

Note has been made of this patent in the book of entries of grants of vacant lands at folio 12—over.

(Signed) ARCE.

MONTEREY, *April* 16, 1839.

Having seen the petition with which this espediente commences, the possession provisionally obtained from the commandant in charge

of Sonoma, together with all other information which was presented and deemed proper to be considered in conformity with the laws and regulations on the matter, citizen Fernando Feliz is declared owner in fee of the place known by the name of Novato, in extent two leagues, a little more or less, as shown by the map which goes attached to the espediente; let the corresponding order be issued, note be made in the proper book, this expediente to be kept for the
72 due approval of the most excellent departmental junta, and the title of grant issued with the usual conditions.

Señor Don Juan B. Alvarado, governor of the department of the Californias, thus ordered, decreed and signed, to which I certify.

(Signed) ALVARADO.

MONTEREY, *May* 19, 1840.

Reported to the E. departmental junta; ordered to be passed to the committee on agriculture, in session of this day.

(Signed) JOSE Z. FERNANDEZ, *Secretary.*

On the twenty-second day of the same month the committee returned it with the accompanying report.

(Signed) FERNANDEZ.

MONTEREY, *June* 12, 1840.

In view of the approval given on the twenty-second day of last month by the excellent departmental junta, let testimony of it be issued
73 to the party, Don Fernando Feliz, in confirmation of the land named Novato, which he obtained on the sixteenth of April of last year.

Señor Don Juan B. Alvarado, constitutional governor of the department of Californias, thus directed and signed, to which I certify.

(Signed) ALVARADO.

EXCELLENT SIR: The committee on agriculture, charged to report on the petition of Don Fernando Feliz, having seen the espediente, in view of the report which appear in it, and all other information which could be procured; also the grant of his excellency, Governor Don Juan Bautista Alvarado, the committee reports for your excellency's decision the following articles:

Art. 1st. The grant made by Governor Don Juan Bautista Alvarado of the land known by the name of Novato, to Don Fernando Feliz, is approved.

Art. 2nd. This espediente will be returned to the departmental government.

Monterey, May 20th, 1840.

(Signed) JOSÉ RAFAEL GONZALEZ.

74 (Signed) S. ARGUELLO.

MONTEREY, 22*nd of May*, 1840.

In session of this day the excellent departmental junta approved the two articles with which the preceding report ends.

(Signed) MANUEL JIMENO, *President.*

(Signed) JOSÉ Z. FERNANDEZ, *Secretary.*

To the Judge of First Instance:

I, Fernando Feliz, resident of this jurisdiction, owner of the rancho of Novato, appear before you in the most favorable manner, and represent that, as appears by the title which I present with the necessary formalities, two sitios de ganado mayor, (two square leagues,) within the boundaries described in said title, and as I find it necessary that it should appear in all future time which are the said boundaries, and whether I trespass upon my neighbors, or they upon me, you will be pleased to order that the usual examinations of identity, occular view, and recognition being previously made, the co-
75 terminous neighbors be cited, and the measurement of my lands aforesaid be proceeded with; for which purpose I now name for surveyor (when the time may arrive) Don Antonio Ortega, resident of this jurisdiction and skillful in such matters, and let the other persons who may be interested appoint a surveyor on their part, and the aforesaid measures be proceeded to.

I therefore pray you have the goodness to do as I request, and that the above-mentioned examinations being made, they may be delivered to me, with the original documents which may be made out, this writing, and whatever else may be necessary for the security of my right, excusing me for using common paper, for want of that of the corresponding stamp.

San Rafael, November 11th, 1842.

(Signed) FERNANDO FELIZ.

In the town of San Rafael, on the eleventh day of month of November, one thousand eight hundred and forty-two, before me, citizen Salvador Vallejo, magistrate of this jurisdiction, this petition was read, and having been seen, it was admitted, with the
76 document therein mentioned; and I ordered that, having summoned the coterminous neighbors, information be made of identity, occular inspection, and reconnoissance of said land, at which I am ready to assist personally.

I thus directed, ordered, and signed, with those of my assistance.

(Signed) SALVADOR VALLEJO.

Assisting witnesses:

(Signed) CAYETANO JUAREZ.

(Signed) FRANCISCO HIGUERA.

In the aforesaid town, on the twelfth day of the month of November, one thousand eight hundred and forty-two, I, the magistrate before mentioned, with those of my assistance, in order to proceed with the information of identity, caused to appear before me citizen Antonio Ortega, resident of this jurisdiction, by occupation a laborer, and married, to whom I administered an oath, which he made by God and the sign of the cross in due form, promising to speak the truth; and being asked for the description of the lands and places, limits and boundaries, pertaining to the rancho of
77 Novato, he said: he said that he had been a resident of this

jurisdiction eight years, and knows that the lands pertaining to said rancho belong to citizen Fernando Feliz, and that he considers as the boundary the Arroyo of Avichi, the portezuelo (gap) of the rancho of Juan Martinez, the Corte de Madera (saw pits) of Pacaytacala, and the peak of Olamapali, which he has seen and examined several times; and that since the aforesaid Fernando Feliz has owned them he has cultivated them, and his cattle have pastured on them, and, in proof of what he has said, he is ready to go to the said lands with the present magistrate, and show him the places, limits, and boundaries where they reach to; and that all he has said is true, by the oath which he has made, and which he confirms and ratifies; he declares that he is 50 years old, and not disqualified by the laws, and he signed with the present magistrate, and those of his assistance, according to law.

(Signed) ANTONIO ORTEGA.
(Signed) SALVADOR VALLEJO.

Assisting witnesses:
(Signed) CAYETANO JUAREZ.
(Signed) FRANCISCO HIG'A.

78 In continuation, I caused to appear citizen Gregorio Briones, a resident of this jurisdiction; his declaration was the same as the preceding, and he signed with me and those of assistance according to law.

(Signed) GREGORIO BRIONES.
(Signed) SALVADOR VALLEJO.

Assisting witnesses:
(Signed) CAYETANO JUAREZ.
(Signed) FRANCISCO HIG'A.

On the same day, month, and year, I caused to appear citizen Juan Martinez, of the same residence, occupation, and condition as the preceding; aged forty-two years. His declaration was identical with the first, and he signed with me and those of my assistance, according to law.

(Signed) SALVADOR VALLEJO.

Assisting witnesses:
(Signed) CAYETANO JUAREZ.
(Signed) FRAN'CO HIG'A.

79 Being on the fields in the place named Arroyo of Avichi, a boundary of Novato, on the thirteenth day of the month of November, 1842, I, the magistrate, for want of a notary public, acting in virtue of my office, with two assisting witnesses, present the witnesses examined by me, citizen Fernando Feliz, owner of said lands, and citizens Gregorio Briones, Antonio Ortega, Manuel Castro, and Juan Martinez, coterminous resident colindantes, and neighbors, I proceeded to see and reconnoitre the lands of said rancho; and for the better understanding, (greater clearness,) being on horseback in company with all the parties and witnesses before mentioned,

I ordered the aforesaid (witnesses) to point out the places, limits, and boundaries of the lands as they described them in their depositions. They did so; and I, the magistrate, and those of my assistance, saw and examined them and the documents presented, and in testimony I made official note of it, which I signed with those of my assistance, and the others who knew how.

(Signed) GREGORIO BRIONES.
(Signed) SALVADOR VALLEJO.
(Signed) FERNAND OFELIZ.

Assisting witnesses:
(Signed) CAYETANO JUAREZ.
(Signed) FRANCISCO HIG'A.

80 Immediately I, the magistrate, for the purpose of proceeding to the measurement, after the usual notification and ratification, citizen Fernando Feliz, and the colindantes of said lands being present, caused to appear before me and those of my assistance citizens Antonio Ortega and Gregorio Briones, appointed measurers, and I ordered them to take a rope of thread (hemp) and measure (on it) fifty varas with a vara measure of four palmos Castellanos; and the said measurers did, in my presence, with a Spanish Mexican stamped vara measure, mark off the aforesaid number (viz: fifty) of varas on a twisted and well stretched rope, and I ordered them to proceed to measure two square leagues (dos sitios de ganado mayor) which, a little more or less, pertains to the above-named rancho, according to the title and map presented, and they commenced the measurement from the Arroyo of Avichi to the Portezuelo (gap) of Juan Martin, distant two hundred cordels of fifty varas each. The person
81 interested raised at that place a heap of stones as a landmark, and from thence they continued the measurement one hundred cordels to the "Corte de Madera" of Pacaytocala, and the corresponding landmark was placed. Thence the measurement was continued the same number of cordels to the peak of Olympali, when the last landmark was placed, and the measurement of the land contained in the rancho of Novato being considered as concluded, it results that it has an extent of five thousand varas in width, and is ten thousand long; and the aforesaid measurers declared that citizens Fernando Feliz had been made to know the lands which belong to him, according to the title and map which appear at the head of this espediente. For all which, and as a sign of true possession and customary form, he pulled up grass and stones, and threw to the four winds in manifestation of the legal and legitimate possession which he for himself took. The magistrate consequently ordered that for the greater clearness of the boundaries herein described, he should make, at his own cost and expense, landmarks of masonry, more
82 than a vara high, that in all future time they be recognised, and remain as limits and boundaries of his lands by and for their colindantes; and in testimony that the said measurements were performed quietly and peaceably without opposition by any person, he asked for a testimony, and I, the magistrate, with those of my as-

sistance, give it, that everything was done as has been said, and that the measurements referred to were made to the best of the knowledge and belief of the measurers, as they deposed, without deceit or fraud; and for greater security and the ratification of the oath they have made, they signed with me and those of my assistance.

(Signed) ANTONIO ORTEGA.
(Signed) GREGORIO BRIONES.
(Signed) SALVADOR VALLEJO.
(Signed) FERNANDO FELIZ.

Assisting witnesses:
(Signed) CAYETANO JUAREZ.
(Signed) FRAN'CO HIG'A.

This espediente being finished, by which it is shown that juridical possession of the rancho named Novato has been given to citi-
83 zen Fernando Feliz, who took it personally, let this original be delivered to the party interested for the uses he may deem proper, together with the documents he presented.

Citizen Salvador Vallejo, magistrate of this jurisdiction, acting for want of a notary public, in virtue of his office, with two assisting witnesses, thus directed, ordered, and signed, on the fifteenth day of the month of November, one thousand eight hundred and forty-two.

(Signed) SALVADOR VALLEJO.

Assisting witnesses:
(Signed) CAYETANO JUAREZ.
(Signed) FRANCISCO HIG'A.

Second court of Sonoma.

In the town of Sonoma, in Upper California, on the twentieth day of the month of December, one thousand eight hundred and forty-four, before me, citizen Cayetano Juarez, second alcalde of said
84 jurisdiction, acting in virtue of my office, with two assisting witnesses, Fernando Feliz, resident of this jurisdiction, said, that for himself, and in the name of his children, heirs, and successors, and whoever of them may have title, voice, or claim in any manner, he sells, and gives in real sale and perpetual alienation, with the right of inheritance forever, to citizen Jacob P. Leese, first alcalde of this jurisdiction, and to his the land called Novato, in quantity two square leagues, a little more or less, which belongs to the said Fernando Feliz, in possession and fee, and is bounded on the north by the land occupied by the Indian Camilo; south by that of Don Ignacio Pacheco; east by the bay of San Francisco Solano, and west by Juan Martinez, as appears by the title of grant annexed to this instrument, by which it belongs in possession and fee to the vendor. And he (the under) declares and assures that it has not been sold or pledged, and that it is free from tribute, charitable, or religious tax, entail, patronship, pledge, or any other encumbrance,
85 whether perpetual, temporal, or spiritual, general, tacit, or ex-

pressed, and as such he sells it, with all its rights of entry and exit, buildings, uses, customs, rights, servitudes, and other things thereunto belonging, which he owns, and which pertains to him by law, for one hundred breeding cows, twenty-five little calves, twenty-five young bulls, twenty-five steers, and twenty-five bulls, ten milk cows, a drove of twenty-five mares, with a stallion; all which he has received, which he himself acknowledges, and he renounces the new (ninth) law, title first, part fifth, and also declares that the above is the just price and true value of the land referred to, and that it is not worth more, neither did he find any person who would have given so much for it ; and if it is, or may be worth more, of the excess, be it a large or small sum, he makes in favor of the purchaser, his heirs and successors, gift and donation, pure, perfect, and irrevocable, with good faith, with judicial intervention, and other legal formalities, and renounces law 2nd, title first, book ten, of the Nueva Re-
86 copilacion, which treats of contracts of sale, exchange and others, by which damage is sustained in more or less than one half of the just value, and the four years fixed by it in which to demand restitution of the property, or what was wanting of its full value, he considers as part, as if they actually were so; and from this time forward forever, he, for himself, his heirs, and successors, gives up possession, desists and retires from the dominion, ownership, possession, title, claim, recourse, and every other right which pertains to him in the aforesaid lands of Novato, and he grants, releases, and transfers them, with the actions, real and personal, useful, mixed, direct, and effective to the purchaser, and whoever may represent him, that he may possess it, enjoy, exchange, alienate, use, and dispose of it at his pleasure, as of his own property, acquired with a just and legal title ; and he confers on him irrevocable power, with free, full, and general administration, and appoints him his attorney in fact, that, of his own authority, he may enter upon and take per-
mission of the aforesaid land, and seize the real tenure and pos-
87 session which belongs to him by right, and that it may not be necessary for him to take it, he prays that an authenticated copy of this writing be given to him, (the purchaser,) by which, without any other act, it will be seen that he has taken and seized it, and it has been transferred to him, and in the mean time he constitutes himself his tenant and temporary possessor in due form of law. And he binds himself that said land shall be certain, sure, and effective to the purchaser, and that no person shall molest him, or bring suit against his ownership, possession, enjoyment, or benefit, nor shall any incumbrance appear against it ; and if he should be molested, or sued, or an incumbrance appear, as soon as the vendor, his heirs and successors are required in conformity with the law, they shall come forward in defence of it, and will follow it at their own expense, in all courts and tribunals, until they obtain judgment in his favor, and leave him, the purchaser, and his, in free use, quiet, and peaceable possession of it. And not being able to accomplish this, they shall give him another equal in value of the buildings, place, rent,

88 and convenience, or, in want of such, they shall restore him the amount he has expended, the improvements, useful, necessary and voluntary, which at the time he may have, the increased value which in time they may have obtained, together with all the costs, damages, expenses, or losses which may follow or accrue to him; all which they may be compelled to pay in virtue solely of this instrument, and the oath of him who owns it, (the rancho,) or whoever may represent him, to whom he leases it, to fix the amount, and he relieves him from other proof. And for the observance of all the foregoing the vendor binds his person, his property in present possession, or which he may hereafter obtain, and he confess ample power on the courts and judges, who, by law, ought to take cognizance of this matter, to compel him to comply with it as a definitive sentence of a competent judge, passed in authority of res judicata and consented to, for as such he receives it.

(Signed) FERNANDO FELIZ.

Before me.

(Signed) CAYETANO JUAREZ.

89 Assisting witnesses:

(Signed) NASARIO BERREYESA.

(Signed) VB. PRUDON.

I, the undersigned, certify, with those of my assistance, that the preceding instrument was executed on common paper, because there was none of the proper stamp in this place.

Date as above.

(Signed) JUAREZ.

Filed in office Feb'ry 24, 1852.

GEO. FISHER, *Sec'y.*

Supplementary petition.

To the honorable commissioners to settle private land claims in California:

In the matter of the petition of Frederick Billings, Henry W. Halleck and James R. Bolton, assignees of the late Bezar Simmons, praying for the confirmation of title to the Novata rancho, situated in Marin county, in this State, and formerly in the jurisdiction of Sonoma, which petition is on file with the honorable board of

90 commissioners, and is numbered sixty-five, (65.)

The petitioners, in the foregoing petition, and Archibald C. Peachy, respectfully show, in this their supplemental petition, that since the said original petition was filed, the said Frederick Billings, Henry W. Halleck, and James R. Bolton, assignees as set forth in the said original petition, have sold the said Novato ranch to Archibald C. Peachy, as will appear by the exhibit A, herewith filed and prayed to be considered a part of this supplementary petition.

They therefore pray that the said Archibald C. Peachy may be substituted in the place of the original petitioners, and that the confirmation of title to the said rancho may be made to the said Archibald C. Peachy, in his own name, and for his sole use.

By Halleck, Peachy & Billings, att'ys for assignees of B. Simmons, and att'ys for A. C. Peachy.

Filed in office August 31st, 1852.

GEO. FISHER, *Sec'y.*

91 *Exhibit A.*

Know all men by these presents that we, Frederick Billings, James R. Bolton, and Henry W. Halleck, all of the city of San Francisco, in the State of California, assignees of the real estate and personal property of Bezar Simmons, late of said city of San Francisco, by virtue of a certain deed bearing date the 3rd day of September, A. D. 1850, recorded in the office of the recorder of the county of San Francisco, State of California, as such assignees, and acting under and by virtue of said deed, parties of the first part, in consideration of twenty-eight thousand five hundred dollars to us in hand paid, the receipt whereof is hereby acknowledged by Archibald C. Peachy, also of the said city of San Francisco, party of the second part, have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey, unto the said Archibald C. Peachy, party of the second part, his heirs and assigns, all that piece, parcel, and tract of land, with all the buildings and improvements thereon, situate, lying, and being in the county of Marin, in the State of California, known as the Rancho de Novato or Novato rancho,

92 saving and excepting therefrom a small portion thereof, heretofore conveyed by the said Bezar Simmons to Benjamin Franklin Simmons by deed recorded in the office of the recorder of the said county of Marin.

The said tract of land or Novato ranch, hereby conveyed, with the exceptions aforesaid, being the tract of land granted on the 16th day of April, A. D. 1839, by Juan B. Alvarado, governor of California, to one Fernando Feliz, to whom, on the 13th day of November, A. D. 1839, Manuel Jimeno, governor ad interim of California, issued a new grant, which said tract of land, on the 20th day of December, A. D. 1844, was conveyed by said Fernando Feliz to one Jacob P. Leese; and on the 24th day of November, A. D. 1846, by said Jacob P. Leese and Rosalia Vallejo, his wife, to the said Bezar Simmons; and by said Bezar Simmons, by the deed heretofore mentioned, with the exception heretofore stated, conveyed to the said parties of the first part the said tract of land, supposed to contain two square leagues, a little more or less, for the boundaries of which, and

93 for all other pertinent matters, reference being had to the said several conveyances and grants and to the act or record of juridical possession of said tract of land given to said Fernando Feliz, the said grant of Jimeno and the act or record of juridical possession, and the deed or writing of sale made by said Feliz to said

Leese, and the deed of said Leese and wife, being herewith transferred to said party of the second part; the said grant of Alvarado being among the archives of the department of California, now in the possession of the United States surveyor general for said State; and the said parties of the first part do also hereby, for the consideration aforesaid, sell, assign, and transfer, unto the said party of the second part, all the horses, mares, and colts, all the neat cattle, and all the stock of whatever description, and all the farming implements, and all the personal property, of whatever description, on or belonging to the said Novato rancho, to have and to hold the same unto the said party of the second part, his heirs and assigns, to his and their use and behoof forever.

94 In witness whereof we, Frederick Billings, James R. Bolton, and Henry W. Halleck, assignees as aforesaid on this the 9th day of July, the year 1852, hereto set our hands and affix our seals, at San Francisco, aforesaid.

(Signed) FREDERICK BILLINGS, [SEAL.]
Assignee of Bezar Simmons.

(Signed) JAMES R. BOLTON, [SEAL.]
Assignee of Bezar Simmons.

(Signed) H. W. HALLECK, [SEAL.]
Assignee of Bezar Simmons.

Executed and delivered in presence of—
(Signed) R. H. WALLER.

STATE OF CALIFORNIA,
County of San Francisco:

On this 9th day of July, A. D. 1852, personally appeared before me, the subscriber, a notary public in and for said county, Frederick Billings, H. W. Halleck, and James R. Bolton, known to me to be the individuals described in and who executed the foregoing conveyance, and who, as the assignees of the late Bezar Simmons, severally acknowledged to me that they executed the same freely and voluntarily, as the assignees of said Bezar Simmons, for the uses
95 and purposes therein mentioned.

In witness whereof, I have hereunto subscribed my name and affixed my notarial seal, the day and year last above written.

(Signed) ROYAL W. WALLER,
Notary Public.

{ NOTARIAL SEAL. }

Filed in office August 31st, 1852.

GEO. FISHER, *Sec'y.*

Petition of intervention.

To the honorable commissioners to settle private land claims in California:

The petitioners, W. Parker, Servitus Needbour, for themselves, and Servitus Needbour, as administrator of the estate of John H. Allen, deceased, respectfully show:

That on the third day of September, A. D. 1850, Bezar Simmons sold and conveyed to Benjamin Franklin Simmons a certain portion of the rancho called Novato, situate in the present county of Marin, which portion is more particularly described in the deed of
96 conveyance, a copy of which is submitted herewith, marked A.

That on the 7th day of November, A. D. 1850, the said Benjamin Franklin Simmons sold and conveyed the aforesaid tract of land to the said W. Parker, Servitus Needbour, and John H. Allen, by deed of conveyance, a copy of which is submitted herewith, marked B.

That in the month of May, A. D. 1851, the said John H. Allen died in California, and that in the month of August, A. D. 1851, the petitioner, Servitus Needbour, was appointed administrator of the said Allen's estate, all of which will be proved on the hearing of this petition.

Wherefore the petitioners pray that this their petition of intervention in the claim of the assignees of Bezar Simmons to the rancho of Novato, numbered 65 on the docket of the commissioners, be allowed, and that the papers filed in that claim may be taken as a part of this petition; and they further pray that the commissioners confirm to these petitioners the tract of land described in the above-mentioned conveyance.

By their attorneys,

HALLECK, PEACHY & BILLINGS.

97 We consent that the foregoing petition of intervention be allowed.

HALLECK, PEACHY & BILLINGS,
Att'ys for A. C. Peachy and assignees of B. Simmons.

Filed in office August 31st, 1852.

GEO. FISHER, *Sec'y.*

A.

Know all men by these presents that I, Bezar Simmons, of San Francisco, in the State of California, in consideration of thirty-five hundred dollars, to me paid by Benjamin Franklin Simmons, of Novato, in the county of Marin, in said California, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do grant and convey, unto the said Benjamin Franklin Simmons, his heirs and assigns, a portion of the rancho called Novato, in said county of Marin, which said rancho was sold and conveyed to me, the said Bezar Simmons, by Jacob P. Leese and Rosalia Vallejo, his wife, by deed dated the twenty-fourth day of November, A. D.
98 eighteen hundred and forty-six, the said portion hereby conveyed being described as follows: Being the northwest corner of said rancho, and circumscribed by a line run as follows: commence at the corner of said rancho, where the boundary line of Jack Martin's rancho and the boundary line of Camillo's rancho intersect; thence run on Camillo's boundary line in an easterly direction to a

pile of stones; thence due south to an oak tree standing between two springs, stones piled at first on north side; thence in the hillow, taking a westerly course, line to be on the north bank of the rivulet now running in said hillow, to a large oak tree marked, standing by the side of the road and near the said rivulet; thence, crossing the road, taking a west-southwesterly course to a large oak tree, piles of stones at foot, standing at a point of a ridge of hills on the opposite side of the hillow; thence, taking the top of the ridge, in a westerly direction, and continuing until it strikes Jack Martin's rancho; and
99 thence in a northerly direction on Martin's line until it strikes Camillo's rancho, the point of beginning, be the same more or less. To have and to hold the above conveyed premises, with all the appurtenances, unto the said Benjamin Franklin Simmons, his heirs and assigns, to his and their use and behoof forever. And I, the said Bezar Simmons, covenant, for myself, my heirs, executors, and administrators, to and with the said Benjamin F. Simmons, his heirs and assigns, to warrant and defend the said premises against all persons claiming the same by, through, or under me.

In witness whereof, at San Francisco, this third day of September, the year eighteen hundred and fifty, I hereto set my hand and seal.

(Signed) B. SIMMONS. [SEAL]

Executed and delivered in presence of
(Signed) ED. GALUSHA.

STATE OF CALIFORNIA,
County of San Francisco:

This 3d day of September, 1850, personally appeared before me, William Rabe, notary public, duly appointed commissioner, and sworn to act for said county, Bezar Simmons, personally
100 known to me to be the party described in the within deed, and acknowledged that he executed the same freely and voluntarily for the purpose therein mentioned.

Witness my hand and seal of office the day and date above written.

Signed) WILLIAM RABE,
[NOTARIAL SEAL.] *Notary Public, County of San Francisco.*

B.

This indenture, made the seventh day of November, in the year one thousand eight hundred and fifty, between Benjamin F. Simmons, of Novato, in the county of Marin and State of California, party of the first part, and W. Parker, Servitus Needbour, and John H. Allen, all of said State of California, parties of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of two thousand dollars, secured to be paid in lawful money of the United States of America, to be in hand paid by the said

101 parties of the second part, hath granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents doth grant, bargain, sell, alien, remise, release, convey, and confirm, unto the said parties of the second part, and to their heirs and assigns, forever, all of the following piece or parcel of land lying and being in the county of Marin aforesaid, described and bounded as follows, viz: commencing at the northwest corner of the so-called Novato rancho where the boundary line of Jack Martin's rancho intersects with the line of Camillo's rancho; thence, running on Camillo, south line, in an easterly direction, to a pile of stones; thence due south to an oak tree standing between two springs, stones standing at foot on north side; thence, taking a westerly direction, in a hillow on the north bank of a rivulet, running in said hillow to a large marked oak tree by the side of the road and near the said rivulet; thence, crossing the road, taking a west or southerly course, to a large oak tree (pile of stones at foot) standing at a point of the ridge of hills upon the opposite side of the hollow; thence,
102 taking the top of the ridge in a westerly direction, and continuing until it strikes Jack Martin's rancho; and thence in a northerly direction on Martin's rancho to the point of beginning—this being the same premises which were conveyed to the said party of the first part by Bezar Simmons, by deed dated 3d September, 1850, which is placed on record in book A, p. 5, of land titles in said Marin county, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, or to the above-described premises, and every part and parcel thereof, with the appurtenances. To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said parties of the second part, their heirs and assigns forever.
103 And the said Benjamin F. Simmons and his heirs, the said premises, in the quiet and peaceable possession of the said parties of the second part, their heirs and assigns, against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

In witness whereof, the said party of the first part hath hereunto set his hand and seal the day and year first above written.

(Signed) BENJAMIN F. SIMMONS. [SEAL.]
" HARRIET SIMMONS.

Sealed and delivered in presence of—
(Signed) ROB'T R. PASPONT.

STATE OF CALIFORNIA, *County of Sonoma:*

On this 7th day of November, A. D. 1850, before me, Rob't R. Paspont, a notary public in and for said county, personally appeared

Benj. F. Simmons, personally known to me to be the person
104 described in and who executed the within instrument, and acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein specified.

Witness my hand and seal, private, as the seal of my office.

(Signed) ROB'T R. PASPONT. [SEAL.]

Filed in office August 31, 1852.

GEO. FISHER, *Sec'y.*

No. 68.

Stipulation.

It is hereby agreed between the U. S. law agent and the att'ys for the claimant, that the claimants may file a certified copy of the conveyance from the assignees of the late Bezar Simmons of a part of the Novato rancho to Arch'd C. Peachy, and also certified copy of the deed of assignment made by the said Bezar Simmons to Henry W. Halleck, Frederick Billings, and James R. Bolton, on the 3d Sept., 1850; and also a certified copy of the order of the probate court of Marin county, appointing Servitus Needbour, the adminis-
105 trator of John H. Allen, deceased; and that said documents shall be considered in evidence in this case in the same way as if filed before the case was submitted. And it is also agreed that all the evidence taken and documents filed in the claim of the assignees of Bezar Simmons to part of the Novato rancho, and in the claim of Archibald C. Peachy to the same, shall be held and considered as in evidence in the claim of ——— Parker, and Servitus Needbour, and John H. Allen, to the part of said rancho claimed by them, in the same manner as if originally taken and filed in the last-named claim.

October 3, 1854.

LOUIS BLANDING, *Asso. Law Agent.*
HALLECK, PEACHY & BILLINGS,
For Claimants.

Filed in office Oct. 3d, 1854.

GEO. FISHER, *Sec'y.*

B.

106 *Conveyance.*

This indenture, made the seventh day of November, in the year one thousand eight hundred and fifty, between Benjamin F. Simmons, of Novato, in the county of Marin and State of California, party of the first part, and W. Parker, Servitus Needbour, and John H. Allen, all of said State of California, parties of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of two thousand dollars, secured to be paid in lawful money of the United States of America, to be in hand paid by the said party of the second part, hath granted, bargained, sold, aliened, remised, released,

confirmed, and conveyed, and by these presents doth grant, bargain' sell, remise, release, convey, and confirm, unto the said parties of the second part, and to their heirs and assigns forever, all of the following piece or parcel of land, lying and being in the county of Marin aforesaid, described and bounded as follows, viz: Commencing at the northwest corner of the so-called Novato rancho, where the boundary line of Jack Martin's rancho intersects with the line of Camillo's
107 rancho; thence, running on Camillo's south line, in an easterly direction to a pile of stones; thence due south to an oak tree standing between two springs, stones standing at foot or north side; thence, taking a westerly direction, in a hollow on the north bank of a rivulet running in said hollow, to a large marked oak tree by the side of the road and near the said rivulet; thence, crossing the road, taking a west or southerly course, to a large oak tree (pile of stones at foot) standing at a point of the ridge of the hills upon the opposite side of the hollow; thence, taking the top of the ridge, in a westerly direction and continued until it strikes Jack Martin's rancho; and thence, in a northerly direction on Martin's rancho, *and thence in a northerly direction on Martin's rancho*, to the point of beginning—this being the same premises which were conveyed to the said party of the first part by Bezar Simmons, by deed dated 3d Sept., 1850, which is placed on record in book A, p. 5, of land titles in said Marin county: together with all and singular the tenements, hereditaments, and ap-
108 purtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, or to the above-described premises, and every part and parcel thereof, with the appurtenances. To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said parties of the second part, their heirs and assigns forever. And the said Benjamin F. Simmons, and his heirs, the said premises, in the quiet and peaceable possession of the said parties of second part, their heirs and assigns, against the said party of the first part, his heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

In witness whereof, the said party of the first part hath hereunto set his hand and seal the day and year first above written.

109 [SEAL.] BENJAMIN F. SIMMONS.
HARRIET SIMMONS.

Sealed and delivered in the presence of—
ROB'T R. PIERPONT.

STATE OF CALIFORNIA,
County of Sonoma:

On this 7th day of November, A. D. 1850, before me, Robert R. Pierpont, a notary public in and for said county, personally appeared

Benj. F. Simmons, personally known to me to be the person described in and who executed the within instrument, and acknowledged to me that he executed the same freely and voluntarily and for the purposes therein specified.

Witness my hand and private seal as the seal of my office.

[SEAL.] ROB'T R. PIERPONT.

Received and recorded in ledger A, folio 18, 19, Nov. 9, 1850, 3 o'clock a. m.

JOHN A. DAVIS, *Recorder*,
By DANIEL TAYLOR, *Clerk*.

Filed in office Nov. 21, 1853.

GEO. FISHER, *Sec'y*.

110 *Order of probate court.*

At a probate court held in San Rafael, Marin county, August 4th, 1851. Present: Hon. J. A. Short.

In the matter of the estate of Jno. H. Allen, deceased, intestate.

On reading and filing the petition of Servitus Needbour, praying for letters of administration of the estate of John H. Allen, deceased, proof of the notice of said application being given in accordance with the requisitions of the law—

Ordered by the court that whereas Servitus Needbour hath complied with and conformed to all the requisitions of the law in his application for letters of administration on the estate of John H. Allen, deceased, that letters of administration of the estate of John H. Allen, deceased, be granted to the said Servitus Needbour. Ordered by the court that Servitus Needbour be cited to appear before the court forthwith, to file his bond and comply with the requisitions of the law. Servitus Needbour appeared and filed his bond, approved by the court. Ordered that James Miller, George Brewer, and
111 H. L. Wheeler be appraisers for the real and personal property of said estate.

W. F. MERCER, *Cl'k*,
By A. BARNEY, *D*.

STATE OF CALIFORNIA,
Marin County, ss:

I hereby certify that the foregoing is a true copy of orders in the within entitled cause, as appears from the record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of recorder, (no seal having yet been provided by the probate court,) this 30th day of September, A. D. 1854.

[SEAL.] JAS. L. POINDEXTER,
Clerk, Marin County.

Filed in office Oct. 3, 1854.

GEO. FISHER, *Sec'y*.

112 A.

Conveyance from B. Simmons to B. F. Simmons.

Know all men by these presents that I, Bezar Simmons, of San Francisco, in the State of California, in consideration of thirty-five hundred dollars, to me paid by Benjamin Franklin Simmons, of Novato, in the county of Marin, in said California, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do grant and convey, unto the said Benjamin Franklin Simmons, his heirs and assigns, a portion of the rancho called Novato, in said county of Marin, which said rancho was sold and conveyed to me, the said Bezar Simmons, by Jacob P. Leese and Rosalia Vallejo, his wife, by deed dated the twenty-fourth day of November, A. D. eighteen hundred and forty-six, the said portion hereby conveyed being described as follows: Being the northwest corner of said rancho and circumscribed by a line run as follows: Commence at the corner of said rancho where the boundary line of Jack Martin's rancho and the boundary line of Camillo's rancho intersect; thence run on Camillo's boundary line in an easterly direction to a pile of stones; thence
113 due south to an oak tree standing between two springs, stones piled at foot on north side; thence, in the hollow, taking a westerly course line, to be on the north bank of the rivulet now running in said hollow, to a large oak tree, marked, standing by the side of the road and near the said rivulet; thence, crossing the road, taking about southwesterly course, to a large oak tree (pile of stones at foot) standing at a point of a ridge of hills on the opposite side of the hollow; thence, taking the top of the ridge in a westerly direction, and continuing until it strikes Jack Martin's rancho; and thence in a northerly direction on Martin's line until it strikes Camillo's rancho, the point of beginning, be the same more or less.

To have and to hold the above-conveyed premises, with all the appurtenances, unto the said Benjamin Franklin Simmons, his heirs and assigns, to his and their use and behoof forever.

And I, the said Bezar Simmons, covenant, for myself, my heirs, executors, and administrators, to and with the said Benjamin F. Simmons, his heirs and assigns, to warrant and defend the said
114 premises against all persons claiming the same by, through, or under me.

In witness whereof, at San Francisco, this third day of September, the year eighteen hundred and fifty, I hereunto set my hand and seal.

B. SIMMONS. [SEAL.]

Executed and delivered in presence of—
E. C. GALUSHA.

STATE OF CALIFORNIA,
County of San Francisco:

This 3rd day of September, 1850, personally appeared before me William Rabe, notary, duly appointed, commissioned, and sworn to

act for said county, Bezar Simmons, personally known to me to be the party described in the within deed, and acknowledged that he executed the same freely and voluntarily for the purposes therein mentioned.

Witness my hand and seal of office the day and date above written.

[SEAL.] WILLIAM RABE,

115 *Notary Public, County of San Francisco.*

Entered this 4th day of September, at 2 o'clock p. m.

JNO. A. DAVIS,

Recorder for Marin County, California.

Costs paid by B. F. Simmons, $3 75; ledger A, page 5.

Filed in office Nov. 21, 1853.

GEO. FISHER, *Sec'y.*

B. R. T.—Conveyance from J. P. Leese and wife to B. Simmons.

This indenture, made and concluded on the twenty-fourth day of November, anno Domini one thousand eight hundred and forty-six, between Jacob P. Leese, and Rosalia, his wife, of Sonoma, of the one part, and Bezar Simmons, a native of the town of Woodstock, State of Vermont, United States of America, by his attorney, James Alex. Forbes, H. B. M. vice-consul for California, of the other part, by virtue of a power of attorney dated and given on the thirtieth day of September, A. D. 1846, and duly and properly acknowledged

116 before W. A. Bartlett, alcalde of San Francisco, witnesseth: That the said Jacob P. Leese, and Rosalia Vallejo, his wife, for and in consideration of the sum of six thousand dollars of lawful money, well and truly paid by the said Bezar Simmons, by his said attorney, James Alex. Forbes, at or before the ensealing of these presents, the receipt of which is hereby acknowledged in full, have by these presents granted, bargained, sold, transferred, and confirmed, and by these presents do grant, bargain, sell, transfer, and confirm, to the said Bezar Simmons, his heirs, and assigns forever, by and through his said attorney, James Alex. Forbes, all that certain tract of land lying and being in the jurisdiction of Sonoma, commonly known as the Rancho de Novato, being originally granted unto Fernando Feliz by the Mexican government, the thirtieth day of November, one thousand eight hundred and thirty-nine, and sold by the said Fernando Feliz unto the said Jacob P. Leese; being bounded on the north by the lands of Camilo, an Indian; on the —— by the Bay of San Francisco, on the south by lands of Ignacio Pacheco,

117 and on the southwest and west by lands of John Martin, including a point or tongue of land running into the aforesaid Bay of San Francisco, commonly called the Potrero; the whole of this grant containing two leagues, more or less, together with all and singular the houses, buildings, ways, woods, waters, watercourse, rights and liberties, profits, privileges, and appurtenances whatsoever thereunto belonging or in any way appertaining; the whole of the right, title,

interest, estate, property, claim, and demand whatsoever of them, the said Jacob P. Leese, and Rosalia, his wife, in law or equity or otherwise, however, of, on, in, to, or out of the same.

To have and to hold the same, with all the rights, privileges, and appurtenances thereunto belonging, or in anywise appertaining, unto the said Bezar Simmons, of the second part, his heirs and assigns forever; the said party of the first part hereby covenanting that their heirs, executors, and administrators will warrant and forever defend the title to the said premises, and every part thereof, to him, the said party of the second part, his heirs and assigns, against the
118 lawful claims of all or every person or persons whatsoever claiming or to claim the same, or any part thereof.

In witness whereof, the said party of the first part have hereunto set their hands and seals this day and date above written.

JACOB P. LEESE. [SEAL.]
ROSALIA VALLEJO. [SEAL.]

Done in the presence of—
SALVADOR VALLEJO.

MAGISTRATE'S OFFICE, *Sonoma.*

I, the undersigned, chief justice of peace of this jurisdiction, do hereby certify that Jacob P. Leese, and Rosalia Vallejo, his wife, who are personally known to me to be the persons whose names are subscribed to the foregoing deed as parties thereto, this day appeared before me, and acknowledged that they executed and delivered the same as their voluntary deed and act, for the uses and purposes therein contained; and the said Rosalia, being by me made acquainted with the contents of said deed, acknowledged, on an examination apart from her husband, that she executed the same freely, and with-
119 out compulsion or undue influence of her said husband.

In testimony whereof, I have hereunto placed my hand this first day of October, A. D. 1847.

LILBURN W. BOGGS, *Alcalde.*

DISTRICT OF SONOMA,
Territory of California:

Recorded in book, pages 24, 25, and 26.

L. W. BOGGS, *Alcalde.*

Filed in office Nov. 21, 1853.

GEO. FISHER, *Sec'y.*

D.

Assignees of B. Simmons to A. C. Peachy.

Know all men by these presents that we, Frederick Billings, James R. Bolton, and Henry W. Halleck, all of the city of San Francisco, in the State of California, assignees of the real estate and personal property of Bezar Simmons, late of said city of San Francisco, by

virtue of a certain deed bearing date the third day of September, the year one thousand eight hundred and fifty, recorded in the office of the recorder of the county of San Francisco, State of Cali-
120 fornia, as such assignees, and acting under and by virtue of said deed, parties of the first part, in consideration of twenty-eight thousand five hundred dollars, to us in hand paid, the receipt whereof is hereby acknowledged, by Archibald C. Peachy, also of the said city of San Francisco, party of the second part, have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, and convey, unto the said Archibald C. Peachy, party of the second part, his heirs and assigns, all that piece, parcel, and tract of land, with all buildings and improvements thereon, situate, lying, and being in the county of Marin, in the State of California, known as the Rancho de Novato, or Novato ranch, saving and excepting therefrom a small portion thereof heretofore conveyed by the said Bezar Simmons to Benjamin Franklin Simmons, by deed recorded in the office of the recorder of the said county of Marin, the said tract of land, or Novato rancho, hereby conveyed, with the exception aforesaid, being the tract of land granted on the sixteenth day of April, A. D. one thousand eight hundred and thirty-nine, by Juan B. Alvarado,
121 governor of California to one Fernando Feliz, to whom, on the 13th day of November, A. D. 1839, Manuel Jimeno, governor ad interim of California; issued a new grant, which said tract of land, on the twentieth day of December, A D. one thousand eight hundred and forty-four, was conveyed by said Fernando Feliz to one Jacob P. Leese ; and on the twenty-fourth day of November, A. D. one thousand eight hundred and forty-six, by said Jacob P. Leese, and Rosalia Vallejo, his wife, to said Bezar Simmons, and by said Bezar Simmons, by the deed heretofore mentioned, with the exception heretofore stated, conveyed to the said parties of the first part the said tract of land supposed to contain two square leagues, a little more or less, for the boundaries of which, and for all other pertinent matters, reference being had to the said several conveyances and grants, and the act or record of judicial possession of said tract of land given to said Fernando Feliz, the said grant of Jimeno and the act or record of judicial possession, and the deed or writing of sale, made by said Feliz to said Leese, and the deed of said
122 Leese and wife, being herewith transferred to said party of the second part, the said grant of Alvarado being among the archives of the department of California, now in the possession of the United States surveyor general for said State, and the said parties of the first part do also hereby, for the consideration aforesaid, sell, assign, and transfer unto the said party of the second part, all the horses, mares, and colts, all the neat cattle, and all the stock, of whatever description, and all the farming implements, and all the personal property, of whatever description, on or belonging to the said Novato rancho. To have and to hold the same unto the said party of the second part, his heirs and assigns, to his and their own use and behoof forever.

In witness whereof, we, Frederick Billings, James R. Bolton, and

Henry W. Halleck, assignees as aforesaid, on this the ninth day of July, the year eighteen hundred and fifty-two, hereto set our hands and affix our seals at, San Francisco aforesaid.

FREDERICK BILLINGS, [SEAL.]
Assignee of Bezar Simmons.
JAMES R. BOLTON, [SEAL.]
123 *Assignee of Bezar Simmons.*
H. W. HALLECK, [SEAL.]
Assignee of Bezar Simmons.

Executed and delivered in the presence of—
R. H. WALLER.

STATE OF CALIFORNIA,
County of San Francisco:

On this ninth day of July, A. D. 1852, personally appeared before me, the subscriber, a notary public in and for said county, Frederick Billings, James R. Bolton, and H. W. Halleck, known to me to be the individuals described in and who executed the foregoing conveyance, and who, as the assignees of the late Bezar Simmons, severally acknowledged to me that they executed the same freely and voluntarily as the assignees of said Bezar Simmons, for the uses and purposes therein mentioned.

In witness whereof, I have hereunto subscribed my name and affixed my notarial seal the day and year last above written.

[SEAL.]

ROYAL H. WALLER,
Notary Public.

MARIN COUNTY, *ss:*

124 I hereby certify that the foregoing is a true copy of the original deed, as taken from the records in my office.

Witness my hand and official seal this 10th day of September, A. D. 1854.

[SEAL.]

JAS. L. POINDEXTER, *Recorder,*
By D. T. TAYLOR, *Deputy.*

Filed in office Oct. 3, 1854.

GEO. FISHER, *Sec'y.*

Conveyance from assignees to A. C. Peachy.—Exhibit A.

Know all men by these presents that we, Frederick Billings, James R. Bolton. and Henry W. Halleck, all of the city of San Francisco, in the State of California, assignees of the real estate and personal property of Bezar Simmons, late of said city of San Francisco, by virtue of a certain deed bearing date the third day of September, the year one thousand eight hundred and fifty, recorded in the office of the recorder of the county of San Francisco, State of California, as

such assignees and acting under and by virtue of said deed, par-
125 ties of the first part, in consideration of twenty-eight thousand five hundred dollars, to us in hand paid, the receipt whereof is hereby acknowledged by Archibald C. Peachy, also of the said city of San Francisco, party of the second part, have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, and convey, unto the said Archibald C. Peachy, party of the second part, his heirs and assigns, all that piece, parcel, and tract of land, with all the building and improvements thereon, situate, lying, and being in the county of Marin, in the State of California, known as the Rancho de Novato, or Novato ranch, saving and excepting therefrom a small portion heretofore conveyed by the said Bezar Simmons to Benjamin Franklin Simmons, by deed recorded in the office of the recorder of the said county of Marin. The said tract of land, or Novato ranch, hereby conveyed, with the exception aforesaid, being the tract of land granted on the sixteenth day of April, A. D. one thousand eight hundred and thirty-nine, by Juan B. Alvarado, governor of California, to one Fernando Feliz,
126 to whom, on the 13th day of November, A. D. 1839, Manuel Jimeno, governor ad interim of California, issued a new grant; which said tract of land, on the twentieth day of December, A. D. one thousand eight hundred and forty-four, was conveyed by said Fernando Feliz to one Jacob P. Leese; and on the twenty-fourth day of November, A. D. one thousand eight hundred and forty-six, by said Jacob P. Leese and Rosalia Vallejo, his wife, to said Bezar Simmons, and by said Bezar Simmons, by deed heretofore mentioned, with the exception heretofore stated, conveyed to the said parties of the first part. The said tract of land, supposed to contain two square leagues, a little more or less, for the boundaries of which, and for all other pertinent matters, reference being had to the said several conveyance and grants, and the act or record of judicial possession of said tract of land given to said Fernando Feliz; the said grant of Jimeno, and the act or record of judicial possession, and the deed or writing of sale made by said Feliz to said Leese, and the
127 deed of said Leese and wife, being herewith transferred to said party of the second part; the said grant of Alvarado being among the archives of the department of California, now in the possession of the United States surveyor general for said State.

And the said parties of the first part do also hereby, for the consideration aforesaid, sell, assign, and transfer unto the said party of the second part all the horses, mares, and colts, all the neat cattle, and all the stock, of whatever description, and all the farming implements, and all the personal property, of whatever description, on or belonging to the said Novato ranch. To have and to hold the same unto the said party of the second part, his heirs and assigns, to his and their own use and behoof forever.

In witness whereof, we, Frederick Billings, James R. Bolton, and Henry W. Halleck, assignees as aforesaid, on this the ninth day of

July, the year eighteen hundred and fifty-two, hereto set our hands and affix our seals, at San Francisco aforesaid.

FREDERICK BILLINGS, [SEAL.]
128 *Assignee of Bezar Simmons.*
JAMES R. BOLTON, [SEAL.]
Assignee of Bezar Simmons.
H. W. HALLECK, [SEAL.]
Assignee of Bezar Simmons.

Executed and delivered in presence of—
R. H. WALLER.

STATE OF CALIFORNIA,
County of San Francisco:

On this 9th day of July, A. D. 1852, personally appeared before me, the subscriber, a notary public in and for said county, Frederick Billings, H. W. Halleck, and James R. Bolton, known to me to be the individuals described in, and who executed the, foregoing conveyance, and who, as the assignees of the late Bezar Simmons, severally acknowledged to me that they executed the same freely and voluntarily, as the assignees of said Bezar Simmons, for the uses and purposes therein mentioned.

In witness whereof, I have hereunto subscribed my name and affixed my notarial seal the day and year last above written.

[SEAL.] ROYAL H. WALLER,
Notary Public.

129 Received, July 14th, at 3 o'clock p. m., and recorded in Book A of deeds, page 141.

JAS. L. POINDEXTER,
Recorder, Marin County.

$244 $\frac{80}{100}$.

Received, A. C. Peachy, $244 80 cts., it being his amount of taxes for this year as assessed.

WM. T. PARKER, *Sheriff.*

SAN RAFAEL, *Sept.* 22, 1852.

Filed in office Nov. 21, 1853.

GEO. FISHER, *Sec'y.*

Deed of assignment.

This indenture, made this third day of September, A. D. one thousand eight hundred and fifty, between Bezar Simmons, of San Francisco, in the State of California, party of the first part, and Frederick Billings, James R. Bolton, and H. W. Halleck, of said city, parties of the secend part, witnesseth: That the said party of the first part, in consideration of the sum of one dollar, to him in hand paid by the said parties of the second part, the receipt whereof is hereby
130 acknowledged, and for the further consideration hereinafter

specified, hath given, granted, bargained, and sold, and by these presents do give, grant, bargain, and sell, unto them, the said parties of the second part, all those lands, tenements, and hereditaments, lying and being in the State of California, which are more particularly specified and described in a schedule hereto annexed and made part hereof, marked Schedule A. To have and to hold unto them, the said parties of the second part, their heirs and assigns forever. In trust, nevertheless, and to and for the following uses, interests, and purposes, that is to say: that the said parties of the second part shall take possession of all and singular the said lands, tenements, hereditaments hereby conveyed, or intended to be, and sell and dispose of the same, either at public or private sale, to such person or persons, for such prices, and on such terms and conditions, and either for cash or upon credit, as in his judgment may appear best and most for the interest of the parties concerned, and convert the same into money, and thereupon to execute, acknowledge,
131 and deliver good and sufficient deeds, and all instruments of conveyance necessary to effect a sale and transfer of any and all the estates and property hereby conveyed, or intended so to be; and by and with the proceeds of such sales, the said parties of the second part shall first pay and disburse all the just, reasonable, and usual expenses, costs, charges, and commissions of making, executing, and conveying into full effect this assignment, and the objects thereof; and the residue of the proceeds of such sales shall be considered as the nett avails or proceeds of the property hereby conveyed, and first by and with the said nett proceeds, the said parties of the second part shall pay and discharge in full all the debts, obligations, and demands due or to become due by the party of the first part, or in anywise existing against him, together with all interest which may be due thereon at the time of payment; and secondly, by and with the rest, residue, and remainder of said nett proceeds, if any shall remain after the payment in full of said debts and private liabilities
132 of the party of the first part, the said parties of the second part shall pay and discharge the partnership debts mentioned in the deed or assignment this day made by the said Bezar Simmons and William H. Stowell to the said parties of the second part, and hereby referred to according to the order and arrangement established by the said deed for the payment of the debts therein mentioned, as referred to. And the said party of the first part also assigns and conveys to the said parties of the second part all the goods, chattels, vessels, boats, and personal property of every kind mentioned in the said Schedule A, hereto annexed, in trust for the uses and purposes herein set forth as those to which the proceeds of the real estate above conveyed are to be devoted.

In testimony whereof, the party of the first part hath hereunto set his hand and affixed his seal on the day and year first herein written.

B. SIMMONS. [SEAL.]

Signed, sealed, and delivered in presence of—
ARCH'D C. PEACHY.
C. TEMPLE EMMETT.

133 STATE OF CALIFORNIA,
County of San Francisco:

At San Francisco, on this third day of September, A. D. eighteen hundred and fifty, personally appeared before me, a notary public in and for said county, Bezar Simmons, well known to me to be the party described in and who executed the foregoing instrument, and acknowledged that he executed the same freely and voluntarily, and for the purposes therein mentioned.

In witness whereof, I have hereunto set my hand and seal official the day and year above written.

[SEAL.] C. TEMPLE EMMETT,
Notary Public.

Schedule A.

Schedule of property belonging to Bezar Simmons, referred to in his deed of assignment.

The rancho known as Novato rancho, in Marin county, purchased of Jacob P. Leese, and Rosalia Vallejo, his wife, November 24, 1846, save a small portion heretofore conveyed to Benjamin Franklin
134 Simmons, with the improvements and my stock thereon. Seven-sixteenths of the peninsula forming an arm of the Bay of San Diego, purchased of ———.

The following property in the city of San Francisco: an undivided half of one-hundred-vara lot, numbered eighty-eight; forty varas by fifty varas of fifty-vara lot, numbered two hundred eighty-five; western half of fifty-vara lot, numbered two hundred and three; southern half of lot numbered thirty-eight, (fifty-vara lot.) About one hundred and forty-five lots in Sacramento city; the exact number and locality of the same can be ascertained by the original deed of John A. Sutter to said Simmons, dated November 24, A. D. 1849, and recorded in Sacramento, and certain deeds of some of the lots so conveyed by Sutter, given by me to Bethnel Phelps, Isaac F. Matt, Owen Farham, Franklin N. Billings, Mrs. Ann S. Ryder. The following property in the city of Benicia, viz: the western half of lot one, (1,) in block five, (5;) lot six, in block twenty-six; lot sixteen, in block
135 forty-five; lots fourteen and sixteen, in block forty-seven; lot fourteen, in block forty-eight; lot six, in block fifty; lot sixteen, in block fifty-one; lot sixteen, in block fifty-three.

One undivided fourth part of the ship Magnolia.

A note for two thousand dollars signed by John F. Pope.

MARIN COUNTY, *ss:*

I hereby certify that the foregoing is a true copy of the original deed of assignment as taken from the records in my office.

Witness my hand and official seal this 16th day of Sept., A. D. 1854.

[SEAL.] JAS. L. POINDEXTER, *Recorder*,
By D. S. TAYLOR, *Deputy*.

Filed in office Oct. 3, 1854.

GEO. FISHER, *Sec'y*.

136 *Opinion of the board by Com'r S. B. Farwell.*

Claim for a place called Novato, situate in the county of Marin, and containing two square leagues.

BEZAR SIMMONS *et al.*
vs.
THE UNITED STATES. } No. 68.

The petition in this case in the first instance asks confirmation in the name of the assignees of Bezar Simmons, by virtue of a title derived from Fernando Feliz, the original grantee, from the Mexican government. But by subsequent intervening petitions a confirmation is asked in the name of Archibald C. Peachy.

The claimant has placed on file traced copies of the espediente and grant of the said Feliz, which said copies are authenticated and received in evidence, the espediente bearing date the —— day of ———, 1836, the grant issued by Governor Juan B. Alvarado bearing date the 16th day of April, 1839.

Also an additional grant issued to the same person by Governor Manuel Jimeno, bearing date the 13th day of November, 1839, for the same premises, which defines the boundaries more particu-
137 larly; also proper proof that the departmental assembly approved the same on the 22nd day of May, 1840.

And also proof of judicial measurement and possession had and given on the 15th day of November, 1842. The present claimant has shown in evidence a full chain of titles from the original grantee to and in himself.

The boundaries seem to be clearly fixed, and with unusual accuracy, both by the last grant and report of the judicial officer who reports the measurements, and they are well fortified by other proofs in the case. The proofs all establish the facts that the conditions of the grant were fully complied with, and the board are of the opinion that the claim is valid and should be confirmed, and a decree will be entered accordingly in the name of the said Archibald C. Peachy, it appearing from the proofs that he is the present sole owner of the same, and that his intervening petition was filed within the time fixed by the act of Congress for filing claims before this board for confirmation.

Confirmed.

138 Filed in office Nov. 7, 1854.

GEO. FISHER, *Sec'y*

Decree of confirmation.

BEZAR SIMMONS *et al.*
vs.
THE UNITED STATES. } No. 68. Novato.

After hearing the proofs and allegations in this case, it is adjudged and decreed by the board that the claim herein is valid, and is hereby

confirmed in the name of Archibald C. Peachy, the present claimant of record.

The land of which confirmation is hereby had is called Novato, and situated in the county of Marin, and bounded as follows: to wit, commencing at the mouth of Arroyo de Avichi, emptying into estuary of Petaluma, or Bay of San Pablo, and running up said arroyo ten thousand varas to a point called Pablo Colo; thence in a northerly direction five thousand varas to a place marked by a pile of stone; thence in an easterly direction to a place called Loma Palo,
139 five thousand varas; from thence, with the estuary, around the Punto del Potrero, on the estuary, to the place of beginning—containing two square leagues, a little more or less.

ALPHEUS FELCH,
R. AUG. THOMPSON,
S. B. FARWELL,
Commissioners.

Filed in office Nov. 7, 1854.

GEO. FISHER, *Sec'y.*

And it appearing to the satisfaction of this board that the land hereby adjudicated is situated in the northern district of California, it is hereby ordered that two transcripts of the proceedings, and of the decision in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary, one of which transcripts shall be filed with the clerk of the U. S. district court for the northern district of California, and the other be transmitted to the Attorney General of the United States.

140 *Secretary's certificate.*

OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing one hundred and seventeen pages, numbered from 1 to 117, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings, and of the decision of the said board, of the documentary evidence and of the testimony of the witnesses upon which the same is founded, on file in this office, in case number 68 on the docket of the said board, wherein the assignees of Bezar Simmons are the claimants, against the United States, for the place known by the name of "Novato."

[SEAL.] In testimony whereof, I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Fran-
141 cisco, California, this twentieth day of June, A. D. 1855, and of the independence of the United States of America the seventy-ninth.

GEO. FISHER, *Sec'y.*

Endorsed: Filed June 20, 1855.

JOHN A. MONROE, *Clerk.*

143 *Notice of appeal.*

OFFICE OF THE ATTORNEY GENERAL OF THE UNITED STATES,
Washington, June 13th, 1855.

68, Novato.

The Assignees of Bezar Simmons, Claimants:

You will please to take notice that in the above case, decided by the commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 9th day of April, 1855, the appeal in the district court of the United States for the northern district of California will be prosecuted by the United States.

Very respectfully,
C. CUSHING, *Attorney General.*

Endorsed: Filed July 17th, 1855.
JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy.*

144 *Petition.*

To the honorable district court of the United States in and for the northern district of California.

THE UNITED STATES, appellants,
vs.
ARCHIBALD C. PEACHY, W. W. PARKER, SERVITAS NEEDHAM, AND SERVITAS NEEDHAM, ad'r, &c., appellees.

The petition of the United States, by their attorney, represents: That this cause is an application for a review of the decision of the board of commissioners, whereby the claim of the said appellees was confirmed, as appears by reference to the records in the case; that a transcript of the said records was filed in this court on the 1st day of May, 1854; that a notice of appeal was filed on the 1st day of May, 1854, and that the land claimed lies in the said district; that the said claim is invalid.

Wherefore appellants pray that the said decision of the
145 board be reversed, and that this court deem the said title to be invalid.

Respectfully, &c.,
S. W. INGE, *U. S. Dist. Att'y.*

Endorsed: Filed March 7, 1856.
JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy.*

Answer.

No. 223.

In the United States district court for the northern district of California.

THE UNITED STATES, appellants,
vs.
ASSIGNEES OF BEZAR SIMMONS, appellees.
} Transcript No. 68.—Claim for "Novato," 2 sq. leagues or boundaries.

Archibald C. Peachy, W. W. Parker, and Servitus Needham, for themselves, and Servitus Needham, as administrator of the state of John H. Allen, deceased, appellees in the above-entitled cause,
146 appear by their attorneys, and for answer to the petition of the United States, filed herein, say:

That their title to the land called "Novato," as set forth and described in the petition of the assignees of Bezar Simmons, and the supplementary petitions of appellees to the board of commissioners, and in the documentary and other evidence filed in this case, is a good and valid title; that the land claimed is situate in the northern district of California, and within the jurisdiction of the court.

And they pray this honorable court to affirm the decision of the board of commissioners confirming their claim, and to decree their title to be valid.

HALLECK, PEACHY & BILLINGS,
Att'ys for Appellees.

Endorsed: Filed May 7, 1856.

JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy*.

147 *Stipulation.*

CALIFORNIA LAND CLAIMS,
Attorney General's Office, October 6, 1856.

SIR: In the case of the claim of the assignees of Bezar Simmons, confirmed to the claimants by the commissioners, case No. sixty-eight, (68,) appeal will not be prosecuted by the United States.

I am, respectfully,

C. CUSHING.

WM. BLANDING, Esq.,
U. S. Attorney, San Francisco.

In the district court of the United States, northern district of California.

THE UNITED STATES
vs.
THE ASSIGNEES OF BEZAR SIMMONS.
} Case No. 223. Transcript No. 68.

In pursuance of a notice from the Attorney General of the United States, hereunto annexed, it is hereby stipulated and agreed that the appeal heretofore taken in this case from the decision of the United States land commission to ascertain and settle private land
148 claims in California, be dismissed, and the notice of intention

to prosecute said appeal, filed in this court by the Attorney General of the United States, be withdrawn, and that the claimants have leave to proceed under the decree of the said land commission in their favor as under final decree.

WM. BLANDING, *Dist Att'y.*
HALLECK, PEACHY & BILLINGS,
Att'ys for Claimants.

Endorsed: Filed Dec. 16, 1856.

W. H. CHEVERS, *Deputy.*

149 *Order vacating appeal by stipulation.*

U. S. district court.

THE UNITED STATES
vs.
ASSIGNEES OF B. SIMMONS. } No. 223.

It is hereby stipulated and agreed by and between the parties to this cause, by their respective attorneys, that on the 16th day of December, 1856, an order was entered in pursuance of a stipulation filed in the cause on the same day, that claimants have leave to proceed under the decree of the board of land commissioners as under final decree. And it is further stipulated and agreed that this stipulation be filed in the case as of December 16, 1856, in place of said order, which has been mislaid.

SAN FRANCISCO, *Jan'y* 29, 1863.

WM. H. SHARP, *U. S. Att'y.*
SHAFTERS & HEYDENFELDT,
Att'ys for Claimants.

Endorsed: Filed Jan'y 29, 1863.

W. H. CHEVERS, *Clerk.*

150 *Order to return survey by stipulation.*

U. S. district court.

THE UNITED STATES
vs.
ASSIGNEES OF B. SIMMONS. } No. 223.

It is hereby stipulated and agreed by and between the parties to this cause, by their respective attorneys, that on the 2d day of July, 1859, an order was entered on application of the U. S. district attorney, directing the surveyor general of the United States for California to return to the court for examination his survey of the land confirmed in this cause. And it is further stipulated and agreed that this stipulation be filed in the case as of July 2, 1859, in place of said order, which has been mislaid.

SAN FRANCISCO, *Jan'y* 29, 1863.

WM. H. SHARP, *U. S. Att'y.*
SHAFTERS & HEYDENFELDT,
Att'ys for Claimants.

Endorsed: Filed January 29, 1863.

W. H. CHEVERS, *Clerk.*

No.	Course.	Chains.	Sta.	Course.	Chains.	Sta.	Course.	Chains.	Sta.	Course.	Chains.	Sta.	Course.	Chains.	Sta.	Course.	Chains.
1	S. 18 W..	8.97	41	S. 65½ W..	22.50	81	S. 6½ E..	18.00	121	N. 23° E..	6.64	161	S. 17½ E..	3.52	201	N. 35 W..	11.91
2	S. 31 "	24.04	42	S. 8 ½ "	20.25	82	S. 12½ W..	6.10	122	East	4.14	162	49½ "	8.43	202	N. 16 "	8.44
3	S. 5 "	3.27	43	N. 80½ "	14,14	83	S. 4½ E..	13,15	123	S. 49 E..	15.10	163	North	2.59	203	N 69 "	10.29
4	S. 20½ "	8.88	44	N. 22½ "	6.00	84	S. 74½ "	9,56	124	N. 45½ "	4.11	164	N. 79½ E..	6.68	204	S. 68½ "	8.63
5	S. 48½ "	13.77	45	N. 97½ "	19.72	85	N. 56 "	6,24	125	East	2.37	165	S. 47 "	5.98	205	S. 73½ "	13.90
6	S. 34½ "	10.00	46	N. 46½ "	7.10	86	N 20½ W..	6 18	126	S. 66½ E..	8 88	166	S. 86½ "	4.89	206	N. 46½ "	13.e9
7	S. 83½ "	4.11	47	N. 7½ "	21.67	87	N. 28½ E..	9.32	127	39 "	3 61	167	S. 45½ "	3.28	207	S. 44 "	7.58
8	S. 88½ "	5.29	48	N. 26½ E..	13.50	88	N. 50½ W..	6.80	128	31½ W..	8 04	168	S. 2°½ "	8.15	208	S. 14½ E..	8.15
9	S. 69½ "	11.06	49	N. 2½ "	43.13	89	N. 3½ "	9.00	129	59½ E..	4.82	169	S. 39 "	4.73	209	S. 1½	13 09
10	S. 51 "	8.81	50	N. 2½ "	100 27	90	N. 17½ E	3.16	130	N. 64 "	5,72	170	S. 82½ "	3.45	210	S. 65½ E..	6.48
11	S. 32½ "	7.81	51	N. 2 W..	44.05	91	N. 4½ "	4 82	131	S. 54½ "	9.20	171	S. 19½ "	2.78	211	S. 37½ "	2.68
12	S. 34½ "	5.00	52	N. 24½ "	26.20	92	N. 47½ "	6 00	132	S. 26 W..	10 74	172	S. 68½ "	6.25	212	S. 43 W..	4.93
13	N. 69½ "	3.80	53	N. 49½ "	6.08	93	N. 37 "	4.25	133	S. 69½ E..	7.87	173	S. 49 "	8.00	213	S. 51½ E..	5.83
14	N. 76½ "	7.28	54	N. 39 "	16.14	94	N. 59½ "	5.56	134	S 13 W..	9.32	174	S. 25½ W..	3.00	214	South	3.85
15	S. 86 "	3.00	55	N 69½ "	13,23	95	N. 51 "	31.64	135	N. 80 E	5.56	175	S. 56½ "	5.83	215	S. 53½ E..	7.79
16	S. 29½ "	4 60	56	N 23½ "	3.86	96	N 26 W..	5.78	136	S. 79½ "	12.81	176	S. 20½ "	2.35	216	S. 44½ "	5.06
17	S. 5½ "	2.75	57	N. 5 E..	6.16	97	N. 68½ E	11 17	137	N. 42 W..	9.61	177	S. 64½ "	3 44	217	68½ "	7.73
18	S. 48½ "	3.62	58	N. 11½ "	28.14	98	N. 11½ W..	5.29	138	N. 2½ "	3 73	178	S. 9½ E	3.85	218	26½ "	4.32
19	S. 55 E..	1 60	59	N. 50 "	22.77	99	N, 14½ E .	7.69	139	N. 16 E..	3.19	179	S. 31½ W..	10.01	219	10½ W..	9.25
20	S. 66½ "	3.53	60	N. 52½ "	10.22	100	N. 56½ "	7.49	140	N. 69 "	4 21	180	S. 72 "	2.06	220	N. 74½ "	6.37
21	S. 80½ "	4.80	61	S. 81½ "	10.02	101	N. 71½ "	11.47	141	N. 46½ "	3.97	181	S. 83½ "	5.54	221	N. 59½ "	5.63
22	S. 68 "	3.08	62	East.....	11.20	102	S. 51 "	10.42	142	28 W..	6.18	182	S. 17½ "	4.62	222	S. 80 "	12.32
23	N. 83½ "	2.43	63	N. 81½ E .	44 69	103	S. 24½ "	9.50	143	76½ E..	3 85	183	S, 97½ "	7.29	223	N. 56½ "	3.78
24	S. 56 "	3.46	64	S. 72½ "	25 49	104	S. 45½ "	11.53	144	S. 55½ "	6.22	184	S. 38 "	10.08	224	N. 13½ "	6.04
25	S. 82 "	5.60	65	S. 69½ "	6.60	105	N. 58½ "	4.32	145	South	12.93	185	S. 76½ "	9.07	225	S. 81 "	17.28
26	S. 71½ "	4 33	66	S. 64 "	24.88	106	N. 7 W	12.51	146	S. 80 E..	12 47	186	S. 67½ "	4.98	226	N. 65½ "	11.31
27	S. 44 "	7.29	67	East.....	31.80	107	N. 39½ "	11 60	147	S. 4 "	4.00	187	S. 72½ "	9.00	227	S. 82½ "	16 05
28	S. 68 "	24 60	68	S. 75½ E..	35.71	108	N. 29½ "	11.05	148	N. 46½ "	8.98	188	West	5.46	228	S. 14½ "	13.56
29	S. 55½ "	4.03	69	S. 39 "	30.85	109	N. 45½ "	4.36	149	S. 63½ "	13.00	189	N. 16½ W..	7.53	229	S. 44 "	8.97
30	S. 52½ "	5 30	70	S. 35½ "	6 98	110	N. 36½ E	8.92	150	S. 28½ "	8.59	190	N. 14½ "	10.88	230	S. 72½ "	8.85
31	S. 46½ "	5.15	71	S. 31½ "	46.23	111	N. 30 "	5 09	151	S. 57 "	10.66	191	N. 22½ "	7.39	231	S. 84 "	7.50
32	N. 78½ "	17.60	72	S. 66 "	14.29	112	S. 43½ "	6.96	152	S. 36½ "	14.13	192	N. 4½ E	8.25	232	N. 69½ "	17.72
33	N. 62½ "	20.97	73	S. 67½ "	31.05	113	S. 16½ "	8.27	153	65 "	7.33	193	N. 45 W..	9.28	233	N 70½ "	9.22
34	N. 47½ "	8 75	74	S. 62 "	23 90	114	S. 47 "	3.23	154	N. 21½ "	5.40	194	S. 33½ "	5.72	234	S. 36½ "	4.92
35	North	9.62	75	S. 23 "	7.00	115	S. 70½ "	5.63	155	N. 80½ "	4.96	195	N. 53 "	14.42	235	S. 57 E..	5.77
36	N. 73½ W..	70.94	76	S. 60½ "	4.70	116	S. 49½ "	5.34	156	S. 76½ "	8.20	196	S. 60½ "	3.70	236	S. 4½ "	5.34
37	N 36½ "	31.57	77	S. 52 "	7.63	117	N. 68½ "	6,55	157	N. 79 "	3.95	197	S. 84½ "	13.37	237	70½ W..	6.53
38	N. 49½ "	17.75	78	S. 24½ W..	4.19	118	S. 81½ "	4.85	158	S. 30 "	2.44	198	N. 72½ "	15.94	238	N. 79½ "	9.78
39	S. 76½ "	15.75	79	S. 36 "	9.50	119	S. 8 W	3.63	159	S. 13½ "	13.50	199	N. 69½ "	6 84	239	S. 61 "	13.94
40	N. 75 "	17.09	80	S. 13 "	18.07	120	S. 35½ E	9.48	160	75½ "	7.26	200	N. 76½ "	18.76	240	S. 85 "	10.50

151 *Exceptions to survey by U. S.*

U. S. district court.

THE UNITED STATES
vs.
ASS'S OF BEZAR SIMMONS. } No. 223.

And now come the United States, by their attorney, P. Della Torre, and except to the survey of the land claimed in this case, known as the "Rancho de Novato," a plat of which survey was filed in the clerk's office of said court on the 14th day of July, 1859.

And for objection to the confirmation and approval of the said survey, the United States, by their said attorney, allege as follows:

1st. That the said survey was made in direct violation of the act of juridical possession, which did not include any land to the east of a line commencing at "Post No. 1, Point of beginning," and running northerly to a "pile of stones at foot of two buckeye trees," but included the land to the west of such line only.

2d. That the land included within the lines of juridical pos-
152 session is of the extent of two square leagues, the amount granted by Gov. Alvarado, and approved by the departmental assembly.

Wherefore, the United States, by their attorney aforesaid, pray that the said survey be rejected as erroneous, and that the surveyor general be directed by order of this court to make a new survey in accordance with the act of juridical possession, and return a plat of the same, when made, to this court for approval.

SAN FRANCISCO, *July* 29, 1859.

TULLY R. WISE, *Acting U. S. Att'y.*

Endorsed: Rec'd copy within this 29th July, A. D. 1859.
HALLECK, P. & BILLINGS,
Claimants' Attorneys.

Filed July 29, 1859.

W. H. CHEVERS, *Clerk.*

153 *Dep. of G. Briones.*

U. S. district court, nor. dist. California.

THE UNITED STATES
v.
ASS. BEZAR SIMMONS. } No. 223.

SAN FRANCISCO, *June* 29, 1860.

On this day, before Jno. B. Williams, a commissioner of the United States for the districts of California, duly appointed by the circuit court of the U. S. for said districts, under the acts of Congress in such case made and provided, came Gregorio Briones, a witness on behalf of the U. S., who, after being duly sworn, testified as follows,

his evidence being interpreted by Thomas M. Jewett, a sworn interpreter.

Present: T. R. Wise, esq., acting U. S. att'y, by Judge Sloan. Counsel for claimants, Messrs. Halleck, Peachy, and Billings, declined to attend.

Questions by acting U. S. att'y.

Question 1. State your name, age, residence and occupation?

154 Answer 1. Gregorio Briones; age, 62; residence, Marin county; occupation, farmer.

Question 2. Do you know the Rancho "Novato," in Marin county, originally granted to Fernando Feliz?

Answer 2. I do.

Question 3. Did you ever make a measurement of that ranch under the authority of the former government?

Answer 3. I did; I was one of the persons engaged in giving juridical possession to Fernando Feliz; I was one of the measurers. Salvador Vallejo, the Judge Canuto Zalazar, Juan Martinez, and others whose names I don't remember, were present. I remember Victor Prudon was present.

Question 4. Where did you commence the measurement?

Answer 4. At the Arroyo Avichi, where there was a white ash tree; from there to the Portezuelo Novato; from there we took a northwest direction to the top of the mountain, where there

155 were red woods. I marked an oak at that place. From there I went down to the cañada, and went up the Olompali; from there I took an easterly direction to a spring of water; from there a south direction to the road; thence I walked a short distance northwesterly, and then took a south direction and walked along the marsh of the estero, and went near the lomitas, and walked towards the northwest. From there I passed the Portezuelo and reached the place of commencement.

Question 5. Did you place any monument on any part of the boundaries? and if so, describe where.

Answer 5. We did; on the Portezuelo of Novato we placed a pile of rocks; the second was placed where the redwoods grew, on the top of the mountain, which made the boundary between the Novato and the Nicasio ranchos. The pile of rocks at the Portezuelo was the boundary between the Novato rancho and the rancho of Juan Martinez. The third monument was placed on the "falda" or slope of the Olampali, between Olampali and Novato ranchos.

156 Near this monument were some trees, called by the Americans buckeyes. From this last monument we measured to the lomitas, which are about 60 yards from the road from Petaluma to San Rafael; from the lomitas in a straight line to the place of beginning, on the Arroyo Arichi, which is near the salt marsh.

Question 6. Was the potrero or Novato point included within the measurement or not?

Answer 6. It was not; the point was excluded and reserved to the government.

Question 7. What ranch lay to the south of the Novato?

Answer 7. The Pacheco ranch, or San José ranch, bounds the Novato ranch. The Arroyo Arichi is the dividing line.

Question 8. What was the boundary towards San Pablo bay?

Answer 8. The point, or potrero, as it was called.

157 Question 9. Why was not the point included?

Answer 9. Because there were two sitios granted him, which was measured off, and the point was the sobrante.

Question 10. Was Fernando Feliz present?

Answer. He was, and expressed himself perfectly satisfied; he is now dead.

GREGORIO BRIONES.

Sworn to and subscribed before me this 29th day of June, A. D. 1860.

JNO. B. WILLIAMS, *U. S. Com'r.*

Endorsed: Filed June 29, 1860.

W. H. CHEVERS, *Clerk.*

Monition.

UNITED STATES OF AMERICA,
Northern District of California, ss:

The President of the United States of America to the marshal of the United States for the northern district of California, greeting:

[SEAL.] Whereas objection has been made to the official survey

158 and location of the land finally confirmed, in case No. 223, to assignees of Bezar Simmons, known as "Novato," and situated in the county of Marin, in said district:

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to give due notice to all parties having, or claiming to have, an interest in such survey and location, that they be and appear before the district court of the United States for said district, sitting in land cases, on or before Wednesday, the 26th day of September, A. D. 1860, at 11 o'clock, a. m., (if that day shall be a day of jurisdiction, and if not, on or before the next Wednesday thereafter,) then and there to intervene for the protection of such interest, or their defaults will be taken. And what you shall have done under this writ do you then and there make return thereon.

Witness the Hon. Ogden Hoffman, judge of said court, at San Francisco, in said district, this 20th day of August, A. D. 1860.

W. H. CHEVERS, *Clerk.*

Endorsed:

159 The within monition was received by me on Monday, the 20th day of August, 1860, and in obedience thereto I have

given due notice, as therein commanded, by causing the publication of said notice, for four consecutive Wednesdays, in the San Francisco Herald, commencing on the 22nd day of August, 1860, and for four consecutive Saturdays in the Sonoma, a paper published nearest the land, commencing on the day of , 186 .

Dated San Francisco, Aug. 22nd, 1860.

P. L. SOLOMON, *U. S. Marshal.*

Returnable Sept. 26, 1860. Issued August 20, 1860.
Filed Sept. 26, 1860.

W. H. CHEVERS, *Clerk.*

Order on return of monition.

At a stated term of the district court of the United States of America, for the northern district of California, held at the court-room in the city of San Francisco, on Wednesday, the 26th day of September, in the year of our Lord one thousand eight hundred and sixty.

Present: the honorable Ogden Hoffman, district judge.

160 THE UNITED STATES. *v.* THE ASSIGNEES OF BEZAR SIMMONS. } In land cases.—District court, No. 223.—Land Com., No. 68.

And now, at this day, the United States marshal having made return upon the monition heretofore issued in this cause that he had given due notice as therein commanded, on motion of the attorney for the United States, proclamation was made that all parties having or claiming to have an interest in the survey and location of the land finally confirmed in the above-entitled cause, appear and intervene for the protection of such interest. The U. S. district attorney and Edmund Randolph, esq., appeared in behalf of the United States, and Messrs. Halleck, Peachy and Billings for the claimants. No other parties appearing, whereupon it is ordered that the default of all parties not appearing as aforesaid be and the same is hereby entered.

Endorsed: Filed September 26, 1860.

W. H. CHEVERS, *Clerk.*

Motion of U. S. Att'y.

161 District court of the United States, northern district of California.

THE UNITED STATES *v.* ASSIGNEES OF BEZAR SIMMONS, deceased. } D. C., No. 223.—"Novato."

Under an order made herein, the surveyor general of the United States for the State of California, under his hand and seal, but wi thout a formal approval, furnished the map of a survey purporting to be the public official survey of the Novato rancho. Exceptions were filed

thereto on the part of the United States. In the mean time a deputy surveyor was engaged in making a survey of the same and of some adjoining ranchos, but as the said surveyor general stated, without his authority, orders. or direction. A new map, however, seems to have been prepared in his office, representing a new survey of said rancho, whereby the point of land which projects into the bay of San Pablo on the east, called "Novato Point," was included, as was the case by the former survey and map ; but, for the apparent purpose of reducing the area to the quantity mentioned in the grant, a
162 large portion of the land in the southwestern part of the tract, and clearly forming part of the Novato rancho, was excluded and added to the Nicasio rancho, and by which the boundaries marked out and established by monuments by the officers who gave juridical possession were wholly disregarded, thereby leaving the second survey subject to the exceptions already filed to the former. The first map has never been recalled by the surveyor general, nor has the court made any order to send it back for want of a certificate of approval by said surveyor general. Under these circumstances the United States move the court for an order directing the map of the survey now approved to be filed herein in lieu of the former map, to which exceptions have been filed.

CALHOUN BENHAM, *U. S. Att'y.*

Endorsed : Filed Dec. 10, 1860.

W. H. CHEVERS, *Clerk.*

163 *Affidavit of E. Conway.*

U. S. dist. court, nor. dist. Cal.

THE UNITED STATES *vs.* ASSIGNEES OF B. SIMMONS. } No. 223.

I, J. W. Mandeville, U. S. sur. gen'l for California, on oath state that on the fourteenth day of July, A. D. 1859, I filed in the U. S. dist. c't a copy of a plat of survey of the rancho of Novato, the same having been made during the term of my predecessor, Col. Hayes, but not having the approval either of him or myself. The said plat was in the office when I entered upon my duties, and has never had any indorsement or been otherwise than the copy in court. This plat contained 13,296 $\frac{34}{100}$ acres.

In Nov 1859, under my orders, a new survey of the rancho was made in Nov'r, which the quantity was two leagues or 8,870 $\frac{62}{100}$ acres. This survey had my approval and was so indorsed.

Notice of this survey being on file in my office, and that the survey and plat had been approved by me (under the law of 1860) was
164 given by publication in the Sonoma Co. Journal once a week for four weeks, commencing Aug't 24, 1860, and ending Sept. 14, 1860, also in the San Francisco Herald once a week, four weeks, 5 insertions, commencing Aug. 15, ending Sept. 5th. The Sonoma

Co. Journal is published at Petaluma and is the place of publication nearest to the land.

I, Edward Conway, chief clerk in the U. S. sur'r gen'l office, having read the foregoing statement, intended to be signed by J. W. Mandeville, U. S. sur. gen'l, on oath say that the facts above set forth are known to me, and that the same are true. This affidavit is made by me on account of the absence of said Mandeville from the city.

[SEAL.] EDWARD CONWAY, *Chief Clerk.*

Subscribed and sworn to before me November 30th, 1860.

HENRY HAIGHT, *Notary Public.*

Endorsed: Filed Dec. 10, 1860.

W. H. CHEVERS, *Clerk.*

165 *Affidavit of J. W. Mandeville,*

District court of the United States, northern district of California.

THE UNITED STATES
vs.
THES ASSIGNEES OF BEZAR SIMMONS.

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

J. W. Mandeville, being duly sworn, deposes and says, that he is the surveyor general of the United States for the State of California; that when he took charge of said office he discovered that a survey of the rancho Novato had been made, under instructions from his predecessor, Col. Hays, and a plat thereof had been filed by the deputy charged with the survey, and the same remains on file in his office; that the claimant had in his possession a plat of this survey, made out in this office, with a full and regular certificate of Col. Hays, on the 8th April, 1857, stating that the plat was in conformity with the field-notes on file, and which had been examined and approved, although there was no approval found on the records of the office by the affiant, or any other proceeding, showing that final action had been taken in said survey by Col. Hays.

166 That a copy of this survey was filed in the clerk's office of the U. S. dist. court, northern district California, in compliance with an order therefrom, dated 7th July, 1859, that being the survey at that time on the files of the office; that some time after E. W. F. Sloan called upon him at his office and enquired whether he was causing another survey to be made of that rancho, stating to affiant that one of his deputies was actually engaged in making a survey in connection with some adjoining ranchos. Affiant replied that he had issued no instructions for such survey; that if it was being made it was without his directions. Instructions, however, were afterwards issued and a plat of survey returned therein, by which the quantity was limited to two square leagues, and excluded a portion

in the southwest corner of former survey, and including it in the survey of the Nicasio ranch, but retaining Novato Point. This plat affiant informed said Sloan he had some thought of adopting in lieu of the other, remarking that if Messrs. Halleck, Peachy & Billings would consent he would do so; that he afterwards approved said
167 last survey and published the same according to law.

J. W. MANDEVILLE.

Sworn to and subscribed before me this twelfth day of Dec'r, A. D. 1860.

[SEAL.]

JAS. RICE,
Notary Public.

Endorsed: Filed Dec'r 15, 1860.

W. H. CHEVERS, *Clerk.*

Opinion on motion to substitute plats of survey, etc.

THE UNITED STATES
vs.
ASSIGNEES OF BEZAR SIMMONS.

This is a motion to substitute the plat of a recent survey, made by the present surveyor general, for that of a former survey, made by his predecessor, and returned to and on file in this court, and which has been objected to by the U. S. dist. attorney.

It appears that publication of the last survey under the act of 1860 has been made by the surveyor general, and that the same has not been ordered into court, or an application for such order made
168 within the time prescribed by the act. It has therefore become final and conclusive on all parties, unless the court was already possessed of the cause by virtue of the order requiring the first survey to be returned and the exceptions filed to it.

The 6th section of the act of 1860 provides that "all surveys and locations heretofore made and approved by the surveyor general of Cal'a, which have been returned into the said district courts, or either of them, or in which proceedings are now pending for the purpose of contesting or reforming the same, are hereby made subject to the provisions of this act, except that in the cases so returned or pending in publication shall be necessary on the part of the surveyor general."

Some question is made whether the plat heretofore returned into this court purports on its face to have been approved by the then surveyor general. There would seem to be no doubt that it was in fact approved by him, and it was returned to this court by him as the official survey of the land confirmed to the claimants, and as such was duly excepted to by the district attorney. The case was there
169 fore clearly one "in which proceedings were pending in the district court for the purpose of contesting and reforming the survey."

In such cases no publication by the surveyor general is necessary,

nor, if made, of the survey so returned or pending, or of any other which may be substituted for it, can it avail to divest the court of the jurisdiction already acquired, or to bar the contestants of their right to except, unless an application for an order to return into court be made within the time specified by the act. I therefore think that the motion must be denied, so far as it seeks to substitute the new survey for the one heretofore returned to this court; but the cause must proceed as other causes in which, at the passage of the act, proceedings were pending in this court for the purpose of contesting or reforming surveys of confirmed land claims.

Endorsed: Filed May 4, 1861.

W. H. CHEVERS, *Clerk.*

Order denying motion for an order vacating order of July 2, 1859.

170 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Wednesday, the 22nd day of May, in the year of our Lord one thousand eight hundred and sixty-one.

Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES
v.
ASSIGNEES OF BEZAR SIMMONS. } No. 223.

And now at this day comes S. Hydenfeldt, esq., attorney for claimants, and moves the court for an order vacating the order heretofore entered July 2, 1859, ordering the official survey of the land confirmed into court, on the ground of the want of jurisdiction; whereupon the counsel for the claimants and W. H. Sharp, esq., U. S. att'y, having been heard, and due consideration had, it is ordered that the said motion be, and the same hereby is, denied.

Endorsed: Filed May 22nd, 1861.

W. H. CHEVERS, *Clerk.*

Order to close proofs on July 29, 1861.

171 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Wednesday, the 17th day of July, in the year of our Lord one thousand eight hundred and sixty-one.

Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES
v.
ASSIG'S BEZAR SIMMONS. } No. 223.

And now at this day, on motion of W. H. Sharp, esq., U. S. att'y, and by consent of the respective parties, it is ordered that the proofs

in the above-entitled cause be closed on or before Monday the 29th day of July instant.

Endorsed: Filed July 17, 1861.

W. H. CHEVERS, *Clerk.*

172

No.	Course.	Dist.	No.	Course.	Dist.	No.	Course.	Dist.	No.	Course.	Dist.
1	N. 45 E..	0.74	42	S. 34½ W..	19.50	83	N. 40¼ W..	26.70	124	S. 55½ W.	35 60
2	N. 84¾ "	3.70	43	S. 17¾ "	12.00	84	N. 32 E..	11.20	125	S. 45½ "	15.40
3	S. 87 "	3 60	44	N. 57½ E..	13.00	85	N. 46½ W	9 90	126	S. 4 "	10.00
4	S. 54½ "	2.60	45	S. 34 W..	18.50	86	S. 61 "	5.90	127	S. 33 E.	14.00
5	N. 66¾ "	17.20	46	S. 29½ E..	9.00	87	N. 1¾ "	13.90	128	S. 25½ W.	7.00
6	S. 34½ "	10.00	47	N. 68¾ "	12.00	88	N. 63½ "	9.00	129	S. 13 E.	6 50
7	N. 40 "	6.00	48	S. 36¾ W..	16.40	89	S. 4¼ E..	10.00	130	S. 65¼ W	7.50
8	S. 28½ W..	11.50	49	S. 91 E..	8.40	90	S. 88 W..	7.50	131	N. 41¼ "	10.00
9	S. 58 E..	20.60	50	N. 77 "	12.00	91	S. 9¾ "	3.50	132	N. 6¼ "	8.50
10	S. 83 "	17.00	51	N. 60¾ "	11.40	92	S. 31¼ E..	10.00	133	N. 7¼ E	8.50
11	N. 61 "	13.50	52	S. 74¼ "	5.50	93	N. 83¾ W..	16.00	134	N. 3¼ "	30.00
12	N. 16¼ "	15.00	53	N. 13¾ "	15.10	94	N. 13 E..	7.75	135	N. 38¼ "	16.00
13	N. 81 "	19.00	54	S. 23¾ "	7.87	95	N. 59 W..	7 00	136	N. 43½ W.	20.00
14	S. 56¾ "	7.50	55	N. 61¾ "	3.80	96	N. 19¼ E..	12.30	137	N. 61¼ "	23.40
15	N. 83¼ "	17.00	56	N. 14 "	7.00	97	N. 62 W..	6.50	138	N. 44 "	93 60
16	S. 30¼ "	9.00	57	N. 6¼ W..	16 00	98	S. 64 "	9 00	139	N. 43 "	31.42
17	N. 81¼ "	15.50	58	N. 80 E..	3.30	99	N. 9¼ E..	12.80	140	N. 72¼ "	40.00
18	S. 48¼ "	5.00	59	S. 19¾ "	17.50	100	N. 61¾ W..	11.90	141	N. 81½ "	27.16
19	S. 85 "	6.90	60	N. 33½ "	18 80	101	S. 59½ "	15.00	142	N. 64 "	68.50
20	N. 30¼ W..	6.00	61	N. 33¼ W..	15.70	102	N. 1¼ "	12.00	143	S. 72 "	41.30
21	N. 51¼ "	23.00	62	N. 68 E..	3 80	103	N. 65½ "	5.40	144	N 85½ "	19.60
22	N. 46¼ E..	3.60	63	N. 9½ "	3.00	104	S. 39¼ "	10.00	145	S. 5¾ "	38.07
23	N. 50¼ W..	6.50	64	N. 79¼ W..	6 50	105	N. 3 "	7.00	146	S. 12¼ "	39.20
24	N. 46¾ E.	6.00	65	N. 29¾ "	12 30	106	S. 75¾ "	8.00	147	S. 44¼ E.	31.50
25	N. 61¼ W..	10.50	66	N 89½ "	5.20	107	N. 35 E..	10.00	148	N. 75 "	38.27
26	N. 2 E..	22.00	67	N. 47¼ "	6.16	108	N 89½ W..	6.00	149	S. 53¾ "	24.10
27	N. 48¼ "	5.00	68	S. 81½ "	5 90	109	S. 66 "	11.50	150	N. 81½ "	7 20
28	S. 46¼ "	13.10	69	S. 32¼ "	7.70	110	N. 4¾ E..	6.50	151	N. 75¾ "	27.50
29	S. 68 "	11.20	70	S. 71¾ "	7.50	111	N. 59 W..	10.00	152	N. 63¾ "	14.10
30	N. 89½ "	14.00	71	S. 41 E..	5.00	112	N 9¾ "	8.30	153	N. 86½ "	6.60
31	S. 55 "	10.00	72	S. 71½ W..	9.50	113	N. 49¾ "	6.20	154	S. 67½ "	18.00
32	S. 3 "	6.00	73	S. 24¼ E..	7.80	114	S. 39¾ "	13.00	155	South ..	190.00
33	S. 37½ "	12.00	74	S. 47¾ "	4.00	115	S. 36 E..	27.20	1 6	S. 36°30'E	132.24
34	S. 74¼ "	45.00	75	N. 60 "	5.00	116	S. 0¼ W..	14.00	157	S. 84¾ E.	15.00
35	N. 89¾ "	12.50	76	N. 10¾ W..	8.50	117	N. 50¼ "	14.00	158	N. 39½ "	21.50
36	N. 29 "	10.00	77	N. 80¾ "	7.80	118	N. 18 "	8.80	159	N. 69¼ "	20.00
37	N. 59½ "	4.00	78	N. 14½ "	15.30	119	N. 57¾ "	10.00	160	N. 39¾ "	31.80
38	S. 35 W..	8.00	79	N. 79½ "	11.60	120	S. 68¾ "	17.50	161	N. 86½ "	4 80
39	S. 40 E..	9.60	80	S. 71¾ "	17.60	121	S. 11¼ "	15.00	162	N. 3½ "	21.40
40	N. 38 "	32.60	81	N. 21 "	16.00	122	S. 77½ "	9.00	163	N. 18 "	10.60
41	S. 74½ "	4.00	82	S. 81¼ "	7.00	123	S. 21¾ E..	8.60			
		475.94			419 93			444.96			1210.86
											444.96
											419.93
											475.94

31 miles, 77 chains, 69 links.

U. S. SURVEYOR GENERAL'S OFFICE,
San Francisco, California, June 27, 1860.

The field-notes of the "Rancho de Novato," and from which this plat has been made out, have been examined and approved, and are on file in this office.

J. W. MANDEVILLE,
U. S. Sur. Gen'l Cal'a.

U. S. SURVEYOR GENERAL'S OFFICE,
San Francisco, California.

I hereby certify this to be a full, true, and correct copy of the original plat on file in this office of the official survey of the "Rancho de Novato," finally confirmed to the assignees of Bezar Simmons.

In witness whereof, I have hereunto signed my name and caused the seal of this office to be affixed this 27th day of June, 1860.

J. W. MANDEVILLE,
U. S. Sur. Gen'l, Cal'a.

Opinion adopting survey which was approved by the U. S. sur. gen'l June 27, 1860.

173 U. S. district court, nor. dist. of Cal'a.

THE UNITED STATES
vs.
THE ASSIGNEES OF BEZAR SIMMONS. } No. 223.

DECEMBER 19, 1862.

In the decree of the board in this case the land confirmed to the claimants is described as follows:

"Commencing at the mouth of the Arroyo de Avichi, emptying into the Estero de Petaluma, or Bay of San Pablo, and running up said arroyo ten thousand varas, to a point called 'Palos Colorados;' thence in a northerly direction five thousand varas, to a place marked by a pile of stones; thence in an easterly direction to a place called 'Olympali' five thousand varas; from thence with the estuary, around the Punta del Potrero on the estuary, to the place of beginning; containing two square leagues, a little more or less."

This description was evidently taken from the evidence of the witnesses examined before the board. These witnesses all con-
174 cur in identifying the Arroyo de Avichi as the southern boundary; the hill covered with red-wood, or Palos Colorados, as the southwestern corner; and bounding the land on the side of the Nicasio rancho, the portezuelo, and hill of Gracia as points in the western line, which terminates on the north at a hill, on the top of which is a monument of stones; the roblar and the hill of Olympali as the northern limits; and the esteros, or marshes, as the remaining boundary to the point of beginning.

The Olymapali thus separates the rancho from that of Camillo on the north; the Portezuelo and the monument of stones indicate the boundary on the side of Juan Martin; the Palos Colorados that on the side of Nicasio; and the Avichi that on the side of Pacheco. In the grant the land is described as bounded "north by the land of Camillo; south by lands of Pacheco; east by the sea; and west by land of Juan Martin."

It is plain, therefore, that the boundaries mentioned in the decree are those described in the grant and indicated on the diseño. That these are the established and recognized boundaries of the
175 rancho appears by the testimony of several witnesses, and especially by that of the officer who gave the juridical possession, and of Juan Martin, a colindante on the west, who was present on the occasion.

The land included within them is a little less than three leagues.

The quantity mentioned in the grant is "two leagues, a little more or less."

It appears, however, that in the survey of the adjoining rancho of Nicasio, the southwestern and western boundaries of the Novato rancho have not been observed. No objection was made to that survey by the owners of the latter, although it was duly published according to law. It has, therefore, become final. The survey of the Novato, now before the court, follows the lines of the Nicasio survey, and it comprises the remaining lands within the boundaries described in the decree of the board, containing 8,870 acres, or about two square leagues.

It is objected, on the part of the U. S., that the record of judicial possession shows that a point of land called the Potrero, running out towards the east into the marshes, and connected with the
176 main body of the tract by a neck of land of no great width, was not included in the land whereof measurement was made and judicial possession given; that it should, therefore, be excluded from the survey, and the claimants be obliged to locate their land within the boundaries of judicial possession, and on the land already surveyed, and, probably, patented to the owners of Nicasio.

If the Potrero was in fact cut off and excluded, as a sobrante, by the officer who gave judicial possession, there would be no alternative but to exclude it from the survey; and the claimant would have his own negligence to reproach for permitting the Nicasio to be located in part on his land.

But the record of possession fails to establish the fact with any degree of certainty.

It describes the measurement as commencing "at the Arroyo de Avichi, and running thence 10,000 varas to the Portezuelo, or gap, of Juan Martin, where a pile of stones was erected; thence 5.000 varas to the Corte de Madera of Pacaytacala, where the cor-
177 responding landmark was placed; thence 5,000 varas to the peak of Olympali, where the last landmark was placed; whence it results that the rancho of Novato has the extent of 5,000 varas in width, and 10,000 varas in length."

On attempting to apply this description to the ground, we encounter insurmountable difficulties. From the Arroyo de Avichi to the Portezuelo is a distance not exceeding 8,000 varas instead of 10,000, as mentioned in the act of possession, and, though mistakes in measurement of a much greater number of varas, were of very frequent occurrence, yet, in all the cases I have seen, the actual distance was greater, and never less, than that mentioned in the record of possession.

But this line could not have been intended as a boundary. It runs from east to west, through nearly the centre of the rancho, to a point which the next measurement made shows to have been in the middle of the western boundary.

This next measurement was from the Portazuelo to the Corte de Madera, which, as is not disputed, was the Palos Colorados, spoken of by the witnesses as the southwestern corner. The length

178 of this line, as given in the record, nearly corresponds with its actual length. The last line is described as run from the Corte de Madera to the peak of Olympali, 5,000 varas. Like the first, it runs diagonally through the centre of the rancho, crossing the first line nearly at right angles. Instead of being 5,000 varas in length it is nearly 10,000; and it is much longer than the first line, which the record says was 10,000 varas in length. Here the description stops. The three lines given enclose no tract of land. They are merely diagonal lines drawn through the middle of the tract, and crossing each other, the western ends of which are united by the line drawn from the Portazuelo to the Palos Colorados. Even if their lengths, as given in the record, could be reconciled on any hypothesis of possible mistake, with the actual distances between the points indicated, we would still be without the means of determining whether or not the Potrero was to be included. It is difficult to imagine how the measurers could, after determining, as they thought, the
179 distance from the Avichi to the Portazuelo to be 10,000 varas, have imagined that the distance from the Palos Colorados to the Olympali, which is evidently much greater, was only 5,000 varas, and that thus a tract 10,000 varas long and 5,000 varas wide was obtained. The whole description seems hopelessly confused and unintelligible. It makes no mention of the northwestern corner, which all the witnesses agree was fixed north of the Portazuelo, where a pile of stones now exists; nor does it mention the Arroyo de Avichi as a southern boundary, which, in like manner, is recognized on all hands as the ancient boundary of the rancho in that direction.

The U. S. have examined one witness, Gregorio Briones, who assisted at the measurement. But his testimony is wholly unintelligible. He is evidently confused as to the points of the compass, and even correcting his mistakes in that particular, it is impossible to follow or understand his description of the lines run. He states positively, however, that the Potrero was not included.

On the other hand, Vallejo, who gave the possession, Juan Martin, a colindante who assisted, and other witnesses who have known
180 the rancho since its establishment, all testify that it was bounded by the marshes on the east, and included the Potrero. To have cut off a piece of land not more than ¾ of a league in extent, unavailable to any one else than the owner of the Novato, and only accessible from his rancho, and this, when the land was plainly a part of the tract solicited and granted, and if included would give to the rancho an extent less than 3 leagues, while the grant called for two leagues, "a little more or less," will appear to any one acquainted with the mode in which judicial measurements were made a precision and rigorous exactness so strange as to be almost incredible. That the lines were not run around the Potrero is evident. But this was because its boundaries being the esteros there was no necessity of establishing them. The chief object of the proceeding was to fix the boundaries adjoining neighboring ranchos, and this appears to have been done with respect to all the colindantes—Pacheco, the owners of Nicasio, Juan Martin and Camillo, the owner of Olympali. I think,

therefore, from the evidence and the intrinsic probabilities of
181 the case that the Potrero must have been included in the judicial measurement, and certainly there is nothing in the record of that proceeding to justify us in affirming that it was excluded. Indeed, the description of the lines run is so obscure, and evidently imperfect in omitting to mention boundaries which even the U. S. maintain were established, (viz., the Avichi for the southern line, and the hill and Roblar as the northwestern corner and northern line,) that we may well discard it altogether. The claimant would then be at liberty to take two leagues within the exterior limits of his grant and diseño. These, as has been already observed, plainly embrace the Potrero.

This he is willing to do by accepting the survey as made by the U. S. It certainly does not lie in the mouth of the latter to contend that he shall locate his land in part on that which, tho' included within his exterior limits, the United States themselves have surveyed and probably patented as part of the Nicasio rancho.

Indeed, the position which the United States assumes is somewhat anomalous.

182 They admit that officers acting under their authority have included within the survey of Nicasio lands not merely within the external limits of the Novato rancho, but embraced within its boundaries as established by a judicial survey.

They now seek to repudiate their own act, and asserting the validity and completeness of the survey, to confine the Novato rancho vigorously within its limits, notwithstanding that they themselves have already given a part of the land to another.

Before they can be permitted to do this, they should at least be compelled to show that the record of judicial measurement describes the boundaries of the whole tract in a clear, definite, and explicit manner.

But this, as we have seen, they are wholly unable to do. The lines described in that measurement do not give the external boundaries of any tract whatever.

The United States are obliged to resort to parol testimony to establish the northwest corner, and indeed to show what land north of the Portazuelo, and west of the hill of Olymapali, was included, and the limits of the rancho in this direction are admitted. But the
183 same evidence discloses that the Potrero on the southeast was also included, and it is difficult to perceive why, if the lands on the northwest are included, those on the southeast should be left out. But, at all events, the U. S. fail in establishing the fundamental fact on which their whole objection to the survey rests, viz: that a judicial measurement was made, the record of which distinctly discloses what were the limits fixed by the officer who gave the possession, and that the Potrero is not within those limits, but was cut off as a sobrante. Had the survey of Nicasio been correctly made, or ordered into court and modified so as not to encroach upon the lands of Novato, it might have been difficult for the owners of the latter to maintain, under the record of judicial measurement, their right to the 3 leagues included within the exterior boundaries. The court might

justly have required of them to produce a record which showed clearly and undeniably that possession was given of the whole tract before it allowed to them so large an excess above the quantity granted.

But by the erroneous survey of Nicasio the position of the
184 parties is reversed, and the U. S. are driven to assert the completeness and definiteness of the record, in order to confine the claimant within its supposed limits, and oblige him to locate his land in part on lands surveyed to Nicasio.

But this assertion they have been unable to maintain, for the record is inaccurate, incomplete, and unintelligibly.

It is but just that for that the claimant should at least be permitted to obtain his quantity out of the remainder of the rancho, which has been left unappropriated to Nicasio, and which he is now compelled to accept to avoid a conflict with the patent issued or about to be issued to the owners of the latter.

I think, therefore, that the survey, approved by the late surveyor general June 27, 1860, should be confirmed and adopted.

Endorsed: Filed December 19, 1862.

W. H. CHEVERS, *Clerk.*

No.	Course.	Dist.	No.	Course.	Dist.	No.	Course.	Dist.	No.	Course.	Dist.
1	N. 45° E..	0.74	42	S. 34½°W..	19.50	83	N. 40½°W..	26.70	124	S. 55½°W.	35.60
2	N. 84¾ "	3.70	43	S. 17¾ "	12.00	84	N. 32 E..	11.20	125	S 45½ "	15.40
3	S. 87 "	3.60	44	N. 57½ E..	13.00	85	N. 46½ W..	9.00	126	S. 4 "	10.00
4	S. 54½ "	2.60	45	S. 34 W..	18.50	86	S. 61 "	5.90	127	S. 33 E.	14.00
5	N. 66½ "	17.20	46	S. 29½ E..	9.00	87	N. 1¾ "	13.90	128	S. 25½ W.	7.00
6	S. 84½ "	10.00	47	N. 68¾ "	12.80	88	N. 63½ "	9.00	129	S. 13 E.	6.50
7	N. 40 "	6.00	48	S. 36¾ W..	16.40	89	S. 4½ E..	10.00	130	S. 68¾ W.	7.50
8	N. 28½ W..	11.50	49	S. 21 E..	8.40	90	S. 88 W..	7.50	131	N. 41¼ "	10.00
9	S. 58 E..	20.60	50	N. 77 "	12.00	91	S. 2¾ "	3.50	132	N. 6¼ "	8.50
10	S. 83 "	17.00	51	N. 60¾ "	11.40	92	S. 39½ E..	10.00	133	N. 7½ "	8.50
11	N. 61 "	13.50	52	S. 74½ "	5.50	93	N. 83¾ W..	16.00	134	N. 0½ "	30.00
12	N. 16½ "	15.00	53	N. 15¾ "	15.10	94	N. 13 E..	7.76	135	N. 38½ "	16.00
13	N. 81 "	19.00	54	S. 23¼ "	7.87	95	N. 59 W..	7.00	136	N. 43½ "	20.00
14	S. 56½ "	7.50	55	N. 61¾ "	5.80	96	N. 19½ E..	12.30	137	N. 61¼ "	23.40
15	N. 83½ "	17.00	56	N. 14 "	7.00	97	N. 62 W..	6.50	138	N. 44 "	93.60
16	S. 30½ "	9.00	57	N. 8¼ W..	16.00	98	S. 64 "	9.00	139	N. 43 "	31.42
17	N. 81½ "	15.50	58	N. 80 E..	3.30	99	N. 9½ E..	12.80	140	N. 73½ "	40.00
18	S. 48½ "	5.00	59	S. 12¼ "	17.50	100	N. 61¾ W..	11.90	141	S. 81½ "	27.16
19	S. 85 "	6.90	60	N. 33½ "	18.80	101	S. 59½ "	15.00	142	N. 64 "	68.50
20	N. 30½ W..	6.00	61	N. 33¼ W..	15.70	102	N. 1¼ "	12.00	143	S. 72 "	41.30
21	N. 57¼ "	23.00	62	N. 68 E..	5.80	103	N. 65½ "	5.40	144	N. 83½ "	19.60
22	N. 46½ E..	3.60	63	N. 2½ "	3.00	104	S. 39½ "	10.00	145	S. 53½ "	38.07
23	N. 50½ W..	6.50	64	N. 79½ W..	6 50	105	N. 3 "	7.00	146	S. 12½ "	30.20
24	N. 46½ E..	6.00	65	N. 29¾ "	12.30	106	S. 75¼ "	8.00	147	S. 44½ E.	31.50
25	N. 61½ W..	10.50	66	N. 89¼ "	5.20	107	N. 35 E..	10.00	148	N. 75 "	38.27
26	N. 2 E..	22.00	67	N. 47½ "	6.16	108	N. 89½ W..	6.00	149	S. 65¾ "	24.10
27	N. 48¾ "	5.00	68	S. 81½ "	5.90	109	S. 66 "	11.50	150	N. 81½ "	7 20
28	S. 46½ "	13.10	69	S. 39¼ "	7.70	110	N. 4¾ E..	6.50	151	N. 75¾ "	27.50
29	S. 68 "	11.20	70	S. 71¾ "	7 50	111	N. 59 W..	10.00	152	N. 63¾ "	14.10
30	N. 89¾ "	14.00	71	S. 41 E..	5.00	112	N. 9¾ "	8.30	153	N. 86½ "	6.60
31	S. 55 "	10.00	72	N. 71½ W..	9.50	113	N. 49¾ "	6.20	154	S. 67½ "	18.00
32	S. 3 "	6.00	73	N. 24½ E..	7.80	114	S. 29½ "	15.00	155	South ..	190.03
33	S. 37½ "	12.00	74	S. 47¾ "	4.00	115	S. 36 E..	27.20	156	S.36°30'E.	132.34
34	S. 74½ "	45.00	75	N. 60 "	5.00	116	S. 0¼ W..	14.00	157	S. 84¾ "	15.00
35	N. 82¾ "	12.50	76	N. 10¾ W..	8.50	117	N. 50½ "	14.00	158	N. 39½ "	21.50
36	N. 29 "	10.00	77	N. 80¾ "	7.80	118	N. 18 "	8.80	159	N. 69½ "	26.00
37	N. 59½ "	4.00	78	N. 14½ "	15.30	119	N. 57¾ "	10.00	160	N. 39¾ "	31.80
38	S. 35 W..	8.00	79	N. 79½ "	11.60	120	S. 68¾ "	17.50	161	N. 66½ "	4 80
39	S. 40 E..	9.60	80	S. 71¾ "	17.60	121	S. 11½ "	15.50	162	N. 39½ "	21.40
40	N. 38 "	32.60	81	N. 21 "	16.00	122	S. 77¾ "	9.00	163	N. 18 "	10.60
41	S. 74½ "	4.00	82	S. 81½ "	7.00	123	S. 21¾ E..	8.60			
		475.94			419.93			444.96			1916.86
											444.96
											419.93
											475.94
											2257.69

31 miles, 77 chains, 69 links.

The field-notes of the "Rancho de Novato" and from which this plat has been made out, have been examined and approved, and are on file in this office.

J. W. MANDEVILLE,
U. S. Sur. Gen'l, Cal'a.

U. S. SURVEYOR GENERAL'S OFFICE,
San Francisco, California, June 27, 1860.

NOTE.—A notice of the approval of this plat of survey has been published in accordance with the act of Congress of June 14th, 1860, in the "San Francisco Herald," the first publication thereof being on the 15th of August, 1860, and the last on the 5th of September, 1860; also in the paper nearest the land, being the "Sonoma Co. Journal," the first publication thereof being on the 24th of August, 1860, and the last on the 14th of September, 1860.

This plat has remained in this office subject to inspection from the date of the approval thereof.

J. W. MANDEVILLE,
U. S. Surv'r Gen'l, Cal.

U. S. SURVEYOR GENERAL'S OFFICE,
San Francisco, California.

I hereby certify this to be a full, true, and correct copy of the original plat on file in this office of the official survey of the *of the* rancho De Novato, finally confirmed to the assignees of Bezar Simmons.

In witness whereof I have hereunto signed my name and caused the seal of this office to be affixed this the 22d day of December, 1862.

E. F. BEALE, [SEAL.]
U. S. Surv'r Gen'l, Cal.

185 *Final decree.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on the thirtieth day of December, A. D. 1862.

Present: Hon. Ogden Hoffman, district judge.

THE UNITED STATES
vs.
THE ASSIGNEES OF BEZAR SIMMONS. } No. 223.

This cause came on to be heard on the exceptions of the United States to the official survey of the land confirmed to the said assignees of Beza Simmons; and the cause having been regularly brought to a hearing, counsel for the respective parties present, and due deliberation had in the premises, it is now by the court ordered, adjudged, and decreed that the said exceptions of the United States be and the same are hereby overruled; and it is further ordered, adjudged, and

decreed that the official survey of the land confirmed, the field-notes whereof were approved by the surveyor general of the United
186 States June 27th, A. D. 1860, and containing $8,870\frac{62}{100}$ acres, is a good and valid survey of the land confirmed to the said assignees of Beza Simmons, and that the said survey be, and the same hereby is, approved and confirmed.

And it is further ordered, adjudged, and decreed that a certified copy of said plat, filed in this court Dec. 29th, A. D. 1862, and marked "approved December 30th, A. D. 1862, Ogden Hoffman, U. S. dist. judge," be attached to and made a part of this decree for a more full and particular description of the land now finally confirmed to the said assignees of Beza Simmons.

OGDEN HOFFMAN,
Dist. Judge.

Endorsed: Filed December 30, 1862.

W. H. CHEVERS, *Clerk.*

Order granting appeal in behalf of U. S.

187 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Friday the 16th day of January, in the year of our Lord one thousand eight hundred and sixty-three.

Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES
vs.
ASSIGNEES OF BEZA SIMMONS. } No. 223.

This cause having come on to be heard on objections to the survey and location by the surveyor general of the U. S. for California of the land heretofore confirmed to the claimant, and the court having, by its final decree made and entered December 30, 1862, approved the location and survey made by said surveyor general: now, on application of W. H. Sharp, esq., U. S. att'y, it is ordered that an appeal in behalf of the United States from said final decree be,
188 and the same is hereby, granted, and that a certified transcript of the record in said cause be sent to the Supreme Court of the United States without delay.

Endorsed: Filed January 16, 1863.

W. H. CHEVERS, *Clerk.*

I, William H. Sharp, district attorney of the United States for the northern district of California, by virtue of the power vested in me by law, to wit: under the act of the Congress of the United States entitled "An act relative to appeals to the Supreme Court of the United States," approved August 6, 1861, do hereby certify that the annexed and foregoing one hundred and eighty-eight (188) consecutively numbered pages, together with the maps also annexed, exhibit a full, true, and correct transcript of the record and proceedings in

the case of the United States *vs.* the assignees of Bezar Simmons, and numbered 223 on the docket of land cases in the district court of the United States for the northern district of California; and that the original papers and maps from which the said transcript has been made were duly delivered to me by the clerk of said district court, at my request, for the purpose of having them transcribed; and the same are of record and on file in the clerk's office of said district court.

In testimony whereof, I have hereto set my hand and private seal, at San Francisco, in the district aforesaid, this thirtieth day of January, A. D. 1863, and of our independence the 87th.

[SEAL.]

WM. H. SHARP,
U. S. Att'y, Northern Dist. of Cal'a.

77

Mr Justice Davis

In the Supreme Court of the U. States.

THE UNITED STATES, APPELLANTS,

vs.

FREDERICK BILLINGS, H. W. HALLECK, AND JAMES R. BOLTON, ASSIGNEES OF BEZAR SIMMONS.

GIDEON & PEARSON, Printers, 511 Ninth street, Washington

In the Supreme Court of the U. States.

THE UNITED STATES, Appellants,
vs.
FREDERICK BILLINGS, H. W. HALLECK, and JAMES R. BOLTON, Assignees of BEZAR SIMMONS.

This appeal from the decree of the district court, settling the survey of the "Novato Rancho," is taken in *form* by the United States, but is really taken and prosecuted by persons who have intruded upon these lands without any color of right whatever.

The petition to the Mexican Governor by Fernando Feliz was accompanied by a previous license to occupy by the military commandante. The land was accurately described, and accompanied by a deséño admitting of no misapprehension.

There was a concession by Alvarado, and a grant of the same day.

Jimeno, it seems, likewise granted the same lands, with a little greater particularity of description, to the same person, Feliz.

This grant of Alvarado bounds the lands on the east by the estero of Novato; west by the cerito of Garcia; north by the Roblar; and south by the cañada of Novato.

The grant of Jimeno bounds the land on the north by land occupied by the Indian Camillo; on the south by that of Ignacio Pacheco; east by the sea; and west by Juan Martin."

The juridical possession seems to have been given, like many others, by measuring the length and breadth, commencing at the mouth of the Avichi. S. Vallejo, the person giving possession, measured to the Porta-zuello, which is about the middle of the west line; thence he seems to have measured the west line from the Palo Coli to the pile of stones, making the northwest corner; from thence to the east, to the sea or marsh, the point named being the Olampali, a peak standing near the sea. Vallejo refers to the ex-

pediente and deséño as showing the land of which possession was given.

Now, the only question is, Was the point of Novato or the Punta de Potrero included in the land granted?

The lands of Ignacio Pacheco, Juan Martin, the Indian Camillo, and the lands of Nicassio, surrounding the Nicassio on all sides, except the sea side, have all been patented by the United States. These patents have driven in the western boundary of the Novato ranch until not quite two leagues are left within our lines, including the point in question.

That this point is included in the grant is denied only by those pests of society to whom the lands of another are regarded as the proper object of waste and pillage.

1. The diséño clearly includes this point, the dotted lines following the water unmistakably.

2. The fact that such a point as this should have been intentionally omitted by the petitioner, who was in occupation, or by the Government, who could have isolated it by omitting it from the grant, would have been inexplicable.

3. The testimony of Vallejo and Juan Martin establishes the fact, that in giving possession they followed round "the coast" from the Olampali to the mouth of the Avichi—the place of beginning.

The only testimony which the Government has been able to bring attacking our claim, is that of a man named Gregorio Briones, who has figured in several fraudulent transactions connected with land claims in California, but for whom a new fact of extenuation has arisen—that of drunken imbecility. His statements are unintelligible.

It is only necessary to call attention to his testimony, and the opinion of Judge Hoffman in this case, to show that the attempt of the "settlers," through the Government, has indeed done the claimants the serious wrong of *delaying* their patent, but cannot prevent them from ultimately receiving it.

EDMOND L. GOOLD,
Of Counsel for Appellees.

In the Supreme Court of the United States.

No. 123.

DECEMBER TERM, 1864.

THE UNITED STATES, appellant,
vs.
FREDERICK BILLINGS *et al.*, assignees of Bezar Simmons. } No. 123.

APPEAL FROM THE DECREE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

JAMES SPEED,
Attorney General.
JOHN A. WILLS,
Special Counsel for the United States.

In the Supreme Court of the United States.

DECEMBER TERM, 1864.

THE UNITED STATES, appellant,
vs.
FREDERICK BILLINGS *et al.*, assignees of Bezar Simmons. } No. 123.

APPEAL FROM THE DECREE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

STATEMENT OF THE CASE.

This case is an appeal from the decree of the district court of the United States for the northern district of California, confirming the second or "Mandeville survey" of the Novato ranch.

That survey is the one represented by the two duplicate maps, marked, respectively, "page 175" and "page 184."

The first or "Hays's survey" of the ranch was made by Colonel Hays, the predecessor of Mandeville, as surveyor general of California, and is the one represented by the map marked "page 150." This survey, at the instance of the United States, was filed in the district court, July 14, 1859, in obedience to an order of that court, made July 2, 1859, directing the surveyor general to return to the court for examination his survey of the land confirmed in this cause. Printed Record, p. 55, folio 150. Ibid., p. 57, folio 151.

July 29, 1859, the United States filed the following objections to that survey, viz:

"1st. That the said survey was made in direct violation of the act of juridical possession, which did not include any land *to the east* of a line commencing at post No. 1, point of beginning, and running northerly to a 'pile of stones at foot of two buckeye trees,' but included the land *to the west* of such line only.

"2d. That the land included within the lines of juridical possession is of the extent of two square leagues, the

amount granted by Governor Alvarado, and approved by the departmental assembly.

"Wherefore the United States, by their attorney aforesaid, pray that the said survey may be rejected as erroneous, and that the surveyor general be directed, by order of this court, to make *a new survey in accordance with the act of juridical possession*, and return a plat of the same, when made, to this court for approval." Printed Record, p. 57.

The pith of these objections was, 1st. That under a grant and confirmation calling for *two* leagues, viz: 8,876 acres, a survey had been made including $13,296\frac{34}{100}$ acres; that is within 18 acres of *three* leagues. 2d. That the point of land known as the "Punta Potrero," or "Potrero Novato," containing nearly one league, had been included in the survey, contrary to the limitation of the grant, to the decree of confirmation, and to the boundaries of the act of juridical measurement.

These objections were of a very formidable character, and and something had to be done by the claimants to *circumvent* them, because they could not overthrow them. Accordingly, *while this first survey was pending in the district court, subject to these objections*, and before any action of that court upon them, it appears that a deputy surveyor, without any order of court, without any instructions or authority from the surveyor general, and *no doubt at the instance of the claimants in this case, for he would not have acted of his own motion*, made the second or Mandeville survey of the Novato ranch. This survey partly obviated the objections to the first by reducing the quantity of land included in the survey from $13,296\frac{34}{100}$ acres to $8,870\frac{62}{100}$ acres, *by throwing out the southwestern corner of the ranch*, about which there was no dispute, and including it in the survey of the Nicasio ranch, to which it did not belong, thereby creating a seeming necessity for including in the Novato ranch the Potrero Novato, the disputed land, which, according to the act of juridical measurement, did not belong to it.

The philosophy of the proceding will better be understood by stating a few facts in juxtaposition. The Nicasio ranch was claimed and confirmed to H. W. Halleck, a member of the firm of Halleck, Peachy & Billings.

The claim for the Novato ranch was filed February 24, 1852, before the land board in the name of *Frederick Billings, H. W. Halleck* and James R. Bolton, as assignees of Bezar Simmons, by *Halleck, Peachy & Billings*, attorneys for

claimants. Printed Record, pp. 3, 4. Subsequently, July 9, 1852, these assignees of Bezar Simmons sold their claim to this ranch to *Archibald C. Peachy*, a member of the same firm of Halleck, *Peachy* & Billings, who was substituted as claimant August 31, 1852. Printed Record, p. 33–45.

It also appears that the firm of Halleck, Peachy & Blilings continued to act as attorneys for Mr. Peachy and others interested in this claim both before the land board, and afterwards in the United States district court, down at least till September 26, 1860. Printed Record, pp. 36, 54, 55, 60. S. Heydenfeldt, esq., appears for the first time as attorney for claimants, May 22, 1861, (Ib., p. 64,) and Shafters & Heydenfeldt, as attorneys for claimant, January 29, 1863. Ib., p. 55.

We are now prepared to understand the history of the second survey given, December 12, 1860, under oath by Mandeville, the surveyor general, who made it:

"J. W. Mandeville, being duly sworn, deposes and says: That he is the surveyor general of the United States for the State of California; that when he took charge of said office he discovered that a survey of the rancho Novato had been made under instructions from his predecessor, Colonel Hays, and a plat thereof had been filed by the deputy charged with the survey, and the same remains on file in his office; that *the claimant* had in his possession *a plat of this survey*, made out in this office, *with a full and regular certificate of Colonel Hays, on April* 8, 1857, stating that the plat was in conformity with the field-notes on file, *and which had been examined and approved*, although there was no approval found on the records of the office by the affiant, or any other proceeding showing that final action had been taken on said survey by Colonel Hays.

"*That a copy of this survey was filed in the clerk's office of the United States district court for the northern district of California, in compliance with an order therefrom, dated July* 7, 1859, *that being the survey at that time on the files of the office;* that some time after, E. W. F. Sloan called upon him at his office and inquired whether *he* was causing *another survey* to be made of that rancho, stating to affiant that *one of his deputies was actually engaged in making a survey in connexion with some adjoining ranchos.* Affiant replied that he had issued no instructions for such survey; *that if it was being made it was without his directions.* Instructions, however, were *afterwards* issued and a plat of survey returned therein by

which *the quantity was limited to two square leagues*, and *excluded* a portion of the southwest corner of former survey, and including it in the survey of the Nicasio, but retaining Novato Point. This plat, affiant informed said Sloan, *he had some thought of adopting* in lieu of the other, remarking that *if Messrs. Halleck, Peachy & Billings would consent, he would do so;* that he *afterwards approved said last survey*, and published the same according to law." Printed Record, pp. 62, 63.

The action of the surveyor general in authorizing the last survey occurred in November, 1859. Conway, in his deposition, drawn up, originally, to be signed by Mandeville, says: "In November, 1859, under my orders, a new survey of the rancho was made in November, [of?] which the quantity was two leagues, or 8,870$\frac{32}{100}$ acres. This survey had my approval and was so indorsed." Printed Record, p. 61. But it was *not approved* by him till June 27, 1860. Ib., pp. 65, 66.

Halleck owned the Nicasio ranch, into which one league of the Novato ranch had been surveyed; Peachy owned the Novato ranch from which it was taken. The survey was originated without the action of the surveyor general, but was afterwards authorized by him in November, 1859, and the plat of the survey was approved by him in June, 1860; *the only condition being that Messrs. Halleck, Peachy & Billings would consent.* That they did consent is shown by the fact that the plat was approved. It appears, therefore, that *Mr. Peachy*, both as *claimant* and as *counsel* for himself, *consented to the second survey—to its inclusions and exclusions.*

This second survey was published under the law of 1860. It was not ordered into court, nor any exception taken to it by any one within the period allowed by that law. Printed Record, pp. 61, 62, 63. Mr. Peachy, therefore, had notice in law, as well as in fact, that a part of the Novato ranch had been *included* in the survey of the Nicasio ranch by its *exclusion* from the Novato ranch. He had also legal notice of its *inclusion* in the Nicasio ranch, and took no steps to prevent it. The evidence on this last point is furnished by the court. In the opinion of the court this statement is made: "It appears, however, that in the survey of the adjoining rancho of Nicasio, the southwestern and western boundaries of the *Novato rancho* have not been observed. *No objection was made to that survey* by the owners of *the latter*, although

it was duly published according to law. *It* has, therefore, become final. *The survey of the Novato, now before the court, follows the lines of the Nicasio survey*, and it comprises the remaining lands within the boundaries described in the decree of the board, containing 8,870 acres, or about two square leagues." Printed Record, p. 67. And yet, strangely enough, this active procurement by the claimant in this case of the inclusion of a part of the Novato ranch in the survey of the Nicasio ranch, on the one side, and this negligent acquiescence by the claimant in this case, on this other, is gravely assigned as a reason why the Potrero Novato should be included in the survey of the Novato ranch.

How or by what authority the second survey just described came judicially before the district court does not appear in the record. On the contrary, *there is evidence in the record to show that it never did come judicially before that court.*

The first survey and map was never recalled by the surveyor general, nor did the court ever order it back, for want of a certificate of approval by the surveyor general. This fact is asserted by the United States district attorney. Printed Record, p. 61; and there is nothing in the record to contradict it. Besides, on the 10th of December, 1860, a motion was made to *substitute* the second for the first survey, *but that motion was denied by the court.* In the course of its opinion, the court says: "*I therefore think that the motion must be denied so far as it seeks to substitute the new survey for the one heretofore returned to this court;* but the cause must proceed as other causes in which, at the passage of the act (of June 14, 1860,) proceedings were pending in this court for the purpose of contesting or reforming surveys of confirmed land claims." Printed Record, p. 64.

Again, May 22, 1861, the claimants moved the court for an order to *vacate the order of July* 2, 1859, ordering the official survey of the land confirmed into court, *on the ground of a want of jurisdiction;* whereupon the counsel for the claimants and W. H. Sharp, esq., United States attorney, having been heard, and due consideration had, it is "ordered that the said motion be and the same hereby is *denied.*" Printed Record, p. 64.

The object of this movement was to get rid of the first survey, in order that the second might become absolute under the provisions of the act of June 14, 1860, because, having been published as required by that act, no exceptions had been filed against it; but this attempt also failed.

Up to this point the court steadily refused to countenance the second survey, holding that the first survey must be reformed according to the method pointed out by the act of June 14, 1860, and that the second survey was not before the court, and that it had no validity.

Nevertheless, the court subsequently adopted the second survey by its decree as a correct survey of the Novato rancho, (Printed Record, pp. 70, 71, 65, 66,) and from that decree the United States now appeal.

ARGUMENT FOR THE UNITED STATES.

In regard to the Mandeville or second survey, and to the decree of the district court adopting it as the true survey and location of the Novato ranch, the United States contend:

1st. That said survey was a nullity from beginning to end, because it both originated without the sanction of the surveyor general, and was afterwards authorized and approved by him, *without authority of law.*

2d. That it was incapable of adoption and confirmation by the district court under the provisions of the act of June 14, 1860—1st, because it was never legally before that court under that law; 2d, because the provisions of that act were not followed by that court in reforming the first survey, so that the second survey can be regarded as a legitimate amendment of the first survey.

3d. That the second survey is erroneous in point of fact—1st, because it *excludes* land which it ought to *include*, viz: the southwestern corner of the rancho Novato; and 2d, because it *includes* land which it ought to *exclude*, viz: the "Punta Potrero," both the said exclusion and inclusion being contrary to the express terms of the act of juridical possession and measurement, and to the mass of the oral evidence presented by the claimants themselves.

I. *The Mandeville survey was a nullity, &c.*

It originated and was authorized and was finally approved by the surveyor general of California, *during the pendency* of the first survey in the district court—first, under the practice established under the second decision of this court in the Fossatt case; and, second, under the provisions of the act of June 14, 1860.

It is only necessary to consider the legality of the proceedings in regard to the second survey, under the provisions of the act of June 14, 1860.

When it was filed in the district court does not appear; but it could not have been filed there *until after* its approval by the surveyor general. It was not approved until June 27, 1860. See maps and printed Record, pp. 65, 66. But before that date, the act of June 14, 1860, was passed, taking effect from its date. The 6th section of that act provides, "that all surveys and locations *heretofore made and approved* by the surveyor general of California, *which had been returned into said district courts*, or either of them, or *in which proceedings are now pending for the purpose of contesting or reforming the same, are hereby made subject to the provisions of this act*, except that in the cases so returned or pending no publication shall be necessary on the part of the surveyor general." Laws of Cong., 1859–'60, p. 34.

That this section applied to the first survey was expressly decided by the district court, on the motion to substitute the second for the first survey, because the first survey had *in fact* been approved by Colonel Hays, the previous surveyor general, and had been returned to the district court by his successor as the official survey, and had also been pending there since July 14, 1859, and had been excepted to as such by the United States. Printed Record, pp. 63, 64.

That act could not apply to the *second survey*—1st, because that survey had not been *approved* by the surveyor general, previous to the passage of the act; 2d, because it had *not been returned to the district court* previous to the passage of that law; and 3d, because proceedings in regard to it were not pending in the district court at that date. That act, therefore, applied exclusively to the *first survey*. The jurisdiction of the court attached to that survey and to no other.

An official survey having been made and approved, and returned into court for its examination, to which the jurisdiction of the court attached under the act of June 14, 1860, the power of the surveyor general in regard to the survey of the Novato ranch was exhausted for the time being. It was *functus officio*. He had no power to order, to make, or to approve a new survey. That could be done only by the district court, according to the provisions of the act of June 14, 1860. The proceedings of the surveyor general, therefore, in regard to the second survey, were not only *without* authority of law, but *contrary* to law, and, as such, they were null and void.

II. The second survey was incapable of adoption and confirmation by the district court under the provisions of the act of June 14, 1860—1st, because it was never legally before that court; 2d, because the provisions of that act were not followed by that court in *reforming the first survey*, so that it can be regarded as a legitimate *amendment* of the first survey.

1st. The first branch of this proposition has already been established under the consideration of the first proposition; nothing more need be said on it.

2d. In case of a survey pending before a district court at the date of the act of June 14, 1860, (section 6,) or brought before it afterwards, in pursuance of its provisions, section 4 provides, "that when, on the application of the party or parties interested as aforesaid [including the *United States*, see section 3] in said survey and location, the same shall be returned into court, the said parties may proceed to take testimony as to any matters necessary to show the true and proper location of the claim, &c., and, on hearing the allegations and proofs, the court shall render judgment thereon; and if, in its opinion, the location and survey are erroneous, it is hereby authorized to set aside and annul the same, or correct and modify it; and it is hereby made the duty of the surveyor general, on being served with a certified copy of the decree of said court, forthwith to cause a new survey and location to be made, or to correct and reform the survey and location already made, so as to conform to the decree of the district court, to whom it shall be returned for confirmation and approval." Laws of 1859–'60, p. 34, sec. 6.

The only survey legally before the court, as we have already seen, was the Hays survey. It was also the only survey to which exceptions had been filed by the United States, or to which an opportunity of filing exceptions had been afforded to the United States. The exceptions filed *applied only to the inclusion of the Punta Potrero in the survey*, and *not to the exclusion of the southwestern corner of the Novato ranch* from the survey, an entirely new condition of things. Again, it was the only survey against which the United States had an opportunity to take testimony, and against which it actually did take any testimony. See testimony of Gregorio Briones, taken June 29, 1860, Printed Record, p. 57, &c. In regard to the second survey, the United States had no opportunity to exercise any of these rights, *because it was not before the court.* In total ignorance of the

possibility of there being a second or other survey than the one legally before the court, this section provides only for "setting aside and annulling *the same*," or for "modifying and correcting it;" that is, the survey before the court; and it is then made the duty of the surveyor general to make a new survey, according to the directions of the court. By this law *the initiative* is given to the court; the duty of *obedience* is imposed upon the surveyor general. In this case, on the contrary, all this was reversed. The initiative was usurped by the surveyor general, the duty of obedience was yielded by the court. By failing to pursue the course marked out by the statute, the court illegally adopted a survey illegally made, and not then legally before it. As the case stood under the first survey, the court was obliged either to confirm the survey for the whole quantity of $13{,}296\frac{34}{100}$ acres, or to *throw out the Potrero*, as the sobrante or *excess* over the two leagues confirmed. Under that survey, it would never have dreamed of excluding the *southwest corner* of the ranch in order to include the Potrero; but under the second survey it was called upon to reject the survey altogether, or to do so; in other words, to sanction what it would never otherwise have dreamed of doing. Unfortunately it chose the latter course, and its action therein is the subject of just complaint by the United States in this court. This objection is fatal, and must insure the rejection of the second survey confirmed by the court.

III. The second survey is erroneous, in point of fact; 1st, because it *excludes* land which it ought to *include*, viz: the southwestern corner of the rancho Novato; and 2d, because it *includes* land which it ought to *exclude*, viz: the Punta Potrero; both the said exclusion and inclusion being contrary to the express terms of the act of juridical possession and measurement, and to the mass of the oral evidence presented by the claimants themselves.

The decree of confirmation is for a specific quantity, viz: two square leagues, within the exterior boundaries specified in the decree. Printed Record, pp. 52, 54, 55, 66. The grant for two square leagues, *with a reservation of the sobrante* to the uses of the nation. Ib., pp. 25, 26, art. 3. The words in the grant and in the decree, "a little more or less," under our system, must be rejected. *United States v. Fossatt*, 20 Howard's U. S. R., p. 427.

The survey, therefore must be limited to the quantity of

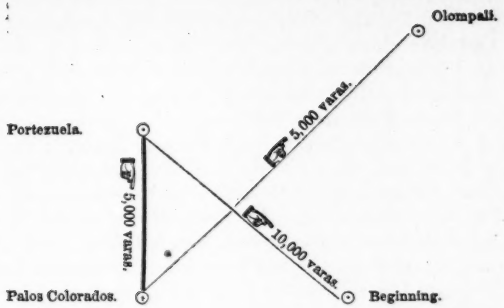
two leagues. This being both estalished and admitted, the two questions of exclusion and inclusion are intimately connected and dependent the one upon the other. The determination of what ought to be *included* in the survey, therefore, determines what ought to be *excluded;* and *vice versa.*

In the opinion of the court below we find the following admission: "If the *Potrero was in fact cut off and excluded, as a sobrante,* by the officer who gave juridical possession, *there would be no alternative but to exclude it from the survey;* and the claimant would have *his own negligence* to reproach for permitting the Nicasio to be located in part on his land. *But the record of possession fails to establish the fact with any degree of certainty.* Printed Record, p. 67.

Under this admission, the only point in dispute is *the fact,* whether the Potrero was included in the juridical measurement, and the possession given to the claimant there under or not. So far from there being any doubt or uncertainty on this point, it is susceptible of actual demonstration that it was not included. This fact is established—first, by the record of the juridical measurement and possession; and second, by the auxiliary oral evidence in the case. In case of any *conflict* between these two species of evidence, it will be admitted that *the record, made at the time,* is higher and better evidence of the facts than the testimony of witnesses given after the lapse of eleven or twelve years. The latter cannot be used to *contradict* the record, but it may be used to *supply facts* not distinctly stated by the record, to identify the natural objects called for by the record, and, generally, to explain it and to remove any obscurity which would otherwise rest upon the record.

In its opinion, this record is "discarded altogether" by the court as "hopelessly confused and unintelligible." Ib., pp. 68, 69.

The description of the measurement, contained in the record, *as read by the court,* results in the production of the absurd figure shown by the following diagram, viz :



The reasoning of the court, however, is conclusive to show that these lines were never run, and that the measurement was never made in this manner. Besides the incongruities, inconsistencies, and contradictions in point of locality and distance pointed out by the court, it is also well remarked by it that "the three lines given *enclose no tract of land.* They are merely diagonal lines *drawn through the middle of the tract* and crossing each other, the western ends of which are united by the line drawn from the porteruela to the Palos Colorados." Ib., pp. 67, 68; fol. 177–178. This reading of the record must, therefore, be erroneous. But it is not necessary to adopt it. What, then, is the true reading of the record?

The whole difficulty in the case arises out of the failure of the court below to read *the whole* of the record of the act of juridical measurement and possession, and at the same time to read it *in connexion with the diseño* accompanying the grant, and with the testimony of the original witnesses of the fact produced by the claimant himself.

By reference to the record, it appears that Fernando Felis, the grantee, on the 11th of November, 1842, presented to Salvador Vallejo, the judge of first instance, his title, and petitioned him to measure and to give him juridical possession of "the two square leagues of land *within* the boundaries described in said title." Printed Record, p. 28. After the usual preliminary arrangements had been made, accordingly, on the following day, the judge of first instance examined three witnesses on oath as to the boundaries of the rancho of Novato.

Antonio Ortega, after being sworn to speak the truth, on "being asked for the description of the lands and places, limits and boundaries, pertaining to the rancho of Novato, said that he had been a resident of this jurisdiction eight years, and knows that the land pertaining to said rancho belongs to citizen Fernando Felis, and that he considers as *the boundary the arroyo Avichi, the portezuela* (gap) of the rancho of Juan Martinez, *the corte de Madera* (saw-pits) of Pacaytacala, and *the peak of Olompali*, which he has seen and examined several times; and that since the aforesaid Fernando Felis has owned them, he *has cultivated them*, and *his cattle have pastured on them;* and in proof of what he has said, *he is ready to go to the said lands with the present magistrate and show him the places, limits, and boundaries where they reach to;* and that all he has said is true by the oath which he has made, and which he confirms and ratifies."

At the same time and place *Gregorio Briones* and *Juan Martinez* made *identically* the same statements. Ib., pp. 28, 29. The progressive *order* in which these boundaries are successively mentioned will be observed: first, the *southern* boundary, "the arroyo Avichi;" second, a point in the *western* boundary, "the portezuela (gap) of the rancho of Juan Martinez;" third, the *northwestern* corner boundary, "the corte de Madera (saw-pits) of Pacaytacala;" and, fourth, the *northeastern* corner boundary, "the peak of Olompali." It will be observed that they follow *consecutively* in the description of the boundary, thereby segregating it from the adjoining lands, *and enclosing a tract of land.*

The record then proceeds as follows: "Being in the fields, in the place named *Arroyo of Avichi, a boundary of Novato,* on the thirteenth day of the month of November, 1842, *I, the magistrate,* for want of a notary public, acting in virtue of my office, with two assisting witnesses, present the witnesses examined by me, citizen Fernando Felis, owner of said lands, and citizens *Gregorio Briones,* Antonio Ortega, Manuel Castro, and *Juan Martinez, coterminous resident colindantes and neighbors, I proceeded to see and reconnoitre the lands of said rancho;* and for the better understanding, (greater clearness,) being on horseback, in company with all the parties and witnesses before mentioned, *I ordered the aforesaid (witnesses) to point out the places, limits, and boundaries of the land as they described them in their depositions. They did so;* and I, the magistrate, and those of my assistance, *saw and examined them* and *the documents presented,* and in testimony I made official note of it. which I signed," &c.

"*Immediately* I, the magistrate, for the purpose of proceeding to the *measurement*, after the usual notification and ratification, *(citizen Fernando Felis and the colindantes of said lands being present,)* caused to appear before me, and those of my assistance, *Antonia Ortega* and *Gregorio Briones*, appointed measurers, &c., and I ordered them to proceed to measure *two square leagues*, (dos sitios de ganado mayor,) which, a little more or less, pertains to the above-named rancho, *according to the title and* MAP *presented*, and they *commenced* the measurement from the arroyo of Avichi to the portezuela (gap) of Juan Martinez, distant two hundred cordels of fifty varas each. The person interested raised at that place a heap of stones as a landmark; and from thence they *continued* the measurement one hundred cordels to the 'Corte de Madera' of Pacaytacala, and the corresponding landmark was placed. *Thence* the measurement was *continued* the same number of cordels to the peak of Olompali, where the *last landmark* was placed and the measurement of the land *contained in the rancho of Novato being considered as concluded*, it results that *it has an extent of five thousand varas in width*, and is *ten thousand long;* and the aforesaid measurers declared that citizen Fernando Felis had been made to know the lands which belong to him *according to the title and* MAP *which appear at the head of this espediente.*" Printed Record, pp. 29, 30.

Thus it appears that the judge, in the first place, was furnished with *the grant and the accompanying diseño*, or map of the land granted; that he then took the testimony of three witnesses as to the *including boundaries of the rancho Novato;* that he afterwards went upon the ground, in company with the grantee, the witnesses and the colindantes, and had the witnesses then and there point out the boundaries described by them in their depositions; that he then and there saw and examined them *in connexion with the grant and the diseño*, the documents presented; that having thus identified the land in the most careful manner he appointed the same *Antonio Ortega* and *Gregorio Briones, two of the witnesses*, to measure the land which they had previously described and identified upon the ground; that these witnesses and measurers, with the grant and the map in their hands, proceeded to measure off a parallelogram, (that is, a figure twice as long as it was wide,) being ten thousand varas long by five thousand varas wide, and containing just two square leagues of land.

These facts in themselves, apart from the considerations before presented, *demonstrate the impossibility* of the measurement having been made by *sane men*, according to the reading of the court below, while at the same time they furnish the key which explains the whole mystery.

The grant was made by quantity, *according to the map;* the map shows an irregular square figure, *the southwestern corner* of which is a point called the "Palos Colorados," and the measurement was made according to and in view of the same map, beginning at the arroyo Avichi. This is admitted by claimant's brief, p. 1.

The court below, in its reading of the record of the juridical measurement, *assumes* that the measurement was made from the mouth of the arroyo Avichi, in *a direct line* to the portezuela while it gives conclusive reasons why the measurement was *not made* in that way: "From the arroyo Avichi to the portezuela is a distance *not exceeding* 8,000 varas, instead of 10,000, as mentioned in the act of possession; and though mistakes in measurement of a *much greater number* of varas were of very frequent occurrence, yet *in all the cases I have seen the actual distance was greater, and never less*, than that mentioned in the record of possession. *But this line could not have been intended as a boundary.* It runs from east to west, *through nearly the centre of the rancho, to a point* which the next measurement made shows to have been *in the middle of the western boundary.*" Printed Record, p. 67. While the judge gave such unanswerable arguments *against* the truth of his own theory, it is remarkable that he overlooked the obvious facts that the record of juridical measurement *four times* declares *the arroyo Avichi to be a boundary of the rancho Novato;* that the diseño shows the "*Palos Colorados*" *to be the southwestern corner* of the grant; that the measurement was made in view of the diseño and grant; and that nothing would be more natural, although not expressed, than that the measurement should be made along the external boundaries indicated by the diseño. But this conclusion of reason and of common sense is not left to conjecture. It is supported by the *direct testimony* of Salvador Vallejo, one of the claimant's own witnesses, although he is mistaken as to the distance. Being shown the diseño, he says: "I recognize said map as a correct copy of that by which I gave said possession. In giving said possession *I commenced at the mouth of the arroyo de Avichi*, emptying into the estuary of Petaluma, or bay of

San Pablo, and marked with a small cross (†) made by me. *From thence I ran up said arroyo to the point marked Palo Colorado*, as marked by the dotted line on the map, in a westerly direction, 200 cordels of 50 varas each"=10.000 varas. Salvador Vallejo's testimony, Printed Record, p. 6; folio 15, 16. Here we have the direct evidence that in reaching the portezuela the measurers did not go diagonally across, as supposed by the judge, but that they followed the external boundaries of the grant as indicated by the diseño, taking the Palos Colorado as an *intermediate* point on the way to the portezuela. This fact is also recognized by the decree of the land board in its description of the external boundaries of the grant, viz: "commencing at the mouth of the arroyo de Avichi, emptying into estuary of Petaluma, or bay of San Pablo, and *running up said arroyo* 10.000 *varas to a point called Pablo Colo;*" that is, to Palos Colorados. Printed Record, pp. 52, 66.

If, then, the Portezuela was reached in the measurement *by way of the Palos Colorados*, the next supposition of the court is equally erroneous, viz: that the measurers turned back and *went south* from the portezuela to the Palos Colorados, *instead of north* to the "Corte Madera;" and that the point named the Corte Madera is *identical* with the Palos Colorados. "This next measurement," says the court, "was from the portezuela to the Corte de Madera, *which, as is not disputed*, was the Palos Colorados spoken of by the witnesses as the southwestern corner." Ibid., p. 67.

"It (the record) makes no mention of the *northwestern corner*, which all the witnesses agree was fixed *north* of the portezuela, where a pile of stones now exists; *nor does it mention the arroyo de Avichi as a southern boundary*, which, in like manner, is recognized on all hands as the ancient boundary of the rancho in that direction." Ibid., p. 68.

The error of the court in regard to the failure of the record to mention the arroyo de Avichi as a boundary of the rancho has already been pointed out. It is equally an error to suppose that the Corte de Madera is *identical* with the Palos Colorados, and that this fact is not disputed. Not a witness swears to this identity, nor is it anywhere admitted by the United States. On the contrary, it is admitted by the court that "all the witnesses *agree* that the northwestern corner was fixed *north* of the portezuela." The northwestern corner supposed to be missing is the Corte de Madera. Vallejo says: "From that point (Palos

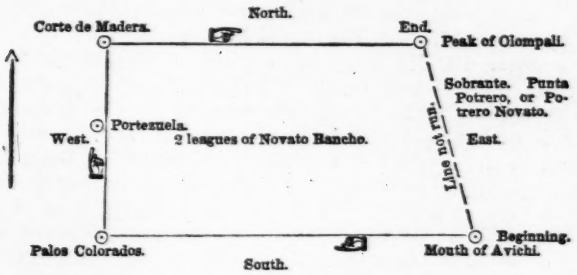
Colorados) I ran in *a northerly* direction 100 cordels of 50 varas *to the point* marked on said map by two small crosses, (††.)" Ibid., p. 6. That is, *to the northwestern corner of the grant*, as shown by the diseño. While it is absurd and contrary to the evidence to suppose that, having already passed the Palos Colorados in going to the portezuela, the measurers would turn round and go back to the same point, it is more rational and in entire conformity to the evidence to conclude that the northwestern corner was the Corte de Madera. The record says: "The person interested raised at that place (the portezuela) *a heap of stones as a landmark*, and from thence *they continued* the measurement 100 cordels to the 'Corte de Madera' of Pacaytacala, and the *corresponding landmark was placed*. *Thence* the measurement the same number of cordels *to the peak of Olompali*, where the *last* landmark was placed," &c. Ibid., p. 30.

Vallejo, in his testimony, in answer to the question, "Is there any object by which you could *identify the point on the map with two small crosses?* (††)"—that is, the northwestern corner—says: "At the time the measurement was made *Fernando Felis erected there a pile of stones as a landmark*, and I could now recognize the spot. At the termination of the line from the last mentioned point to the estuary *at Olompali*, Felis, and Camilo, who was present as a colindante, *erected a pile of stones* to mark the boundary between them." Ibid., p. 7. This statement agrees perfectly with that of the record of the juridical measurement, and fixes the location of the "Corte de Madera" as the *northwestern corner* of the grant and of the measurement. This is admitted by the claimant's brief, p. 1. Besides, the fact that the Palos Colorados was the corner dividing the Novato rancho from the *Nicasio* rancho, and the further fact that the *northwestern corner* divided it from the land of Juan Martin, known as the "Corte de Madera de Novato," both serve to show that the point designated as the "Corte de Madera de Pacaytacala" must be sought for *to the north* rather than to the south of the portezuela. (See northwest corner of map of second or Mandeville survey.)

Thus it appears that the United States are not obliged, as is alleged by the court, (printed Record, p. 69,) to resort to parol testimony to establish the northwestern corner of the ranch. They use no evidence but that submitted by the claimant himself. They have, first, the record of the juridical measurement; second, the testimony

of the claimant's own witnesses; and last, not least, the decree of confirmation, (printed Record, p. 66,) which adopts the evidence furnished by both of these kinds of evidence in regard to the locality of the "Palos Colorados," and of the "Corte de Madera"—that is, of the southwestern and northwestern corners of the ranch.

This location of the point called for as the "Corte de Madera" removes all the inconsistencies and absurdities attributed by the opposite theory to the action of the measurers. The survey becomes *consecutive* from point to point; the lines *bound* and *include* the land granted, instead of *crossing it diagonally;* the distances called for are brought into greater harmony with the actual distances, and the fact noticed by the court, that they are generally *greater* than *less* than those called for, and the figure produced by the survey very nearly approximates that of a parallelogram, as indicated by the record of the survey and measurement. This will be seen more clearly by the following diagram:



The only remaining question is, whether any survey and measurement was made *beyond* the point called "the Peak of Olompali."

On this point the record is clear and decisive. At the peak of Olompali "the *last* landmark was placed, and the *measurement* of the land *contained* in the rancho of Novato *being considered as concluded*, it results that it has an *extent* of five thousand varas in width, and is ten thousand varas long," that is, *just two leagues in extent.* The four corners

having been ascertained and fixed, *the connecting line* between "the peak of Olompali," where the survey ended, and the mouth of the arroyo Avichi, where it began, *was not run in point of fact*, because it was not necessary. It followed as a matter of course, from what had already been done, and because the land contained within the boundary and measurements named amounted to the quantity of two leagues called for by the grant and the measurement. The question of fact here is, whether *the potrero* was *included* in the survey. Vallejo, speaking from memory only, says *that it was.* (Printed Record, p. 6.) Briones, on the contrary, speaking in the same way, says *it was not.*

"Question 6. Was the Potrero or Novato point *included* within the measurement?

"Answer 6. *It was not;* the *point was excluded and reserved to the government.*

"Question 8. What was the boundary towards San Pablo bay?

"Answer 8. *The point* or *potrero*, as it was called.

"Question 9. Why was not the point included?

"Answer 9. *Because there were two sitios granted him*, which were measured off, *and the point was the sobrante.*

"Question 10. Was Fernando Felis present?

"Answer 10. He was, and expressed himself perfectly satisfied. He is now dead." Printed Record, pp. 58, 59.

The assault made upon this witness in the claimant's brief is without any foundation in the evidence.

But, in the conflict of testimony on this point, Briones is sustained by the record, while Vallejo is *contradicted.* The record says expressly, "that *the last* landmark was placed at the peak of Olompali, and that the measurement was then considered as *concluded.*" Ibid., p. 30. Besides, the record is the paramount and most reliable evidence.

To this evidence may be added this *admission* of Judge Hoffman: "*That the lines* [of the juridical measurement] *were not run around the potrero is evident.*" Printed Record, p. 68, fol. 180. This settles *the fact* (whatever excuses may be given for it) that *the potrero was not included in the juridical survey;* and it was not necessary to include it, for the very reason given by Briones, "because there were two sitios [leagues] granted him, [the grantee,] which was measured off, and *the point* [the potrero] *was the sobrante.*" Printed Record, p. 59, Ans. 9. The first survey made by the United States shows this to be the actual fact; and this

adds an overwhelming confirmation to the evidence on this point furnished both by the record of the juridical measurement and by the testimony of Briones, the "drunken imbecile." The whole quantity granted, viz: two leagues, was contained within the limits of the juridical measurement, without including any part of the potrero. If, therefore, the grant is to be limited to two leagues—and to the two leagues of *which actual possession* was given by the officer of the Mexican government—points conceded—then it is clear that *the potrero must be excluded* from the government survey.

It is a circumstance not to be overlooked in this connexion that there was no difficulty in understanding the record of juridical measurement when the first United States survey was made, and when the hope was entertained by the claimant that he would be able to claim the potrero *as a fraction below a league*, although it lacked but eighteen acres of that quantity. The whole "obscurity" has arisen since that time—since the United States objected to the inclusion of the sobrante in the survey. It is only since then that the record has become "confused and unintelligible," and it is only since then that the shallow devices have been resorted to of reversing the courses of the survey, and of having the excess of the Novato grant surveyed into the Nicasio ranch, to which it never belonged, in order to create *an apparent necessity* for including in the survey of the Novato ranch the potrero, which, in fact, never belonged to it; and at the same time, the miserable subterfuge of excluding from it the southwestern corner of the ranch—a part of it included within the very first lines of the juridical measurement, and of which possession was then undoubtedly given.

There is an inaccuracy of statement made by the court in this connexion which must not be overlooked. It is said that Vallejo, who gave the possession, *Juan Martin*, a colindante, who assisted, *and other witnesses* who have known the rancho since its establishment, *all* testify that it was bounded *by* the marshes on the east, *and included the potrero.*" Printed Record, p. 68. Vallejo does so testify, as already noticed, *but no other witness.*

Juan Martin, in answer to the question, "What is the eastern boundary of the rancho?" says: "It is the estero Novato. The estero Petaluma is also a boundary on the east side of the rancho." "What do you mean by estero?

Answer. "*The salt-water marsh.*" Printed Record, p. 9; question and answers numbers 12 and 13. But it will be observed that he was merely testifying about the *external boundaries of the tract*, and was not speaking of *the juridical measurement.* He was not interrogated in regard to that measurement, and does not say whether the potrero was included in the measurement or not.

The only other witness who was examined on the subject of boundaries, besides Gregorio Briones, was Gilbert R. Brush, who admits that his first knowledge of the ranch began in July, 1852. Printed Record, pp. 9, 10. He testifies from hearsay at that date—gives merely the external boundaries, and could have no knowledge on the question whether the potrero was included in the judicial survey or not. Thus we see how groundless is the statement made by the court.

The only remaining objection made by the court to the exclusion of the Potrero Novato from the survey of the ranch, is the exclusion of the southwestern corner of the rancho from the survey, and its inclusion in the survey and patent of the Nicasio ranch. How this was brought about has already been explained. It has been shown that it was done with the express knowledge and consent of the claimant. If he suffers in consequence, he has no one to blame but himself. But the patent is not conclusive against the rights of the claimant to that part of the Novato rancho included in the patent for the Nicasio. That patent contains the express stipulation "that, in virtue of the 15th section of the said act, (of 3d March, 1851,) the confirmation of this said claim and *this patent shall not affect the interests of third persons.*" It is merely a quit-claim as against therights of the United States.

But whether it is or not, cannot confer on the claimant rights which he would not otherwise have against the settlers now in possession of the Punta Potrero, and who claim title to it under the United States, as public land on which they have settled and made improvements in good faith. As between the two their claims are the more meritorious, and they can only be vindicated against the claimant by setting aside the present survey, and by confining the claimant to the boundaries defined by the act of juridical measurement, which excluded the Punta Potrero as the sobrante reserved to Mexico, and to which the United States has succeeded by the treaty with Mexico.

The United States therefore ask that the decree of the

court below, affirming the second or Mandeville survey, shall be set aside, and that a decree shall be entered directing that the Punta Potrero shall be excluded in any future survey of the rancho Novato.

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